

§ 1700.173

the Secretary of Treasury under authority of section 3(a) and 304 of the RE Act:

(1) Advances of principal on notes executed by the Administrator; and

(2) Payment of principal on loans made by the Administrator.

(b) Letters to the Federal Financing Bank (FFB) granting RUS approval to requests from borrowers, which are concurred in by the applicable Regional Director in the Electric or Telephone program for:

(1) Extensions of short-term maturity dates of advances on the specified maturity date;

(2) Prepayment of short-term maturities, including prepayment for the purpose of extending to long-term prior to the scheduled maturity date; and 7

(3) Prepayments of long-term maturities.

(c) Endorsements or assignments on promissory notes or other collateral pledged by borrowers as security for loans, as may be necessary in connection with the return of such documents to borrowers, due to the payment of the obligations in full or in order that the borrowers may institute legal action thereon or in connection therewith and the transmittal to the borrowers of such promissory notes or other collateral pledged by the borrower.

(d) Cancellation or endorsement due to payment on the borrowers' notes which have been paid in full or which are to be returned to borrowers by reason of the cancellation of such notes resulting from the receipt of RUS of funding, renewal or substituted notes and transmittal to the borrower.

(e) Actions concerning borrower loan accounting, computations, procedures and policies.

(f) Liaison responsibility with the Federal Financing Bank, the Department of Treasury.

(g) Liaison responsibility with General Accounting Office (GAO).

(h) In addition, all authorities conferred upon other persons in § 1700.173.

§ 1700.173 Chief, Loans Receivable Branch.

The Chief, Loans Receivable Branch in conformance with applicable regulations and RUS policy is delegated au-

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thority to approve and execute for FOD:

(a) Preparation and forwarding of Energy Resource Conservation (ERC) loan documents to the Office of the General Counsel (OGC).

(b) Preparation and forwarding of basis date agreements to OGC.

§§ 1700.174–1700.189 [Reserved]

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AUTHORITY: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 54 FR 6870, Feb. 15, 1989, unless otherwise noted. Redesignated at 55 FR 39394, Sept. 27, 1990.

EDITORIAL NOTE: Nomenclature changes to part 1703 appear at 55 FR 39397, Sept. 27, 1990.

Subpart A—[Reserved]

Subpart B—Rural Economic Development Loan and Grant Program

SOURCE: 57 FR 44317, Sept. 25, 1992, unless otherwise noted.

§ 1703.10 Purpose.

(a) This subpart sets forth RUS's policies and procedures for making zero-interest loans and grants to borrowers in accordance with the cushion of credit payments program authorized in section 313 of the Act (7 U.S.C. 940c).

(b) The zero-interest loans and grants are provided for the purpose of promoting rural economic development and job creation projects.

§ 1703.11 Policy.

(a) It is RUS's policy that borrowers use the Rural Economic Development Loan and Grant Program to promote projects that will result in a sustainable increase in the productivity of economic resources in rural areas and thereby lead to a higher level of income for rural citizens.

(b) It is RUS's policy that borrowers promote economic development in rural areas and job creation projects that:

(1) Are based on sound economic and financial analyses; and

(2) Take a long-term perspective.

(c) It is RUS's policy to direct the funds under this program to projects which are located in, or will primarily benefit, those rural areas that are experiencing the greatest economic hardship.

(d) It is RUS's policy to encourage economic development in rural areas and job creation projects without regard to service area.

(e) It is RUS's policy to encourage borrowers to make cushion of credit payments.

(f) It is RUS's policy to maintain liaisons with officials of other Federal, state, regional and local rural development agencies to coordinate this program with other rural economic development programs.

§ 1703.12 Definitions.

Act—the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Administrator—the Administrator of the Rural Utilities Service or the Administrator's designee.

Approved purpose—a purpose that the Administrator has specifically approved in the letter of agreement covering the use of the RUS zero-interest loan and/or grant funds provided to the borrower.

Borrower—an entity that has outstanding RUS and/or Rural Telephone Bank (RTB) loan(s) or loan guarantee(s) for an electric or telephone purpose under the provisions of the Act.

Business incubator—a facility in which small businesses can share premises, support staff, computers, software or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other over-

head expenses, and where such businesses can receive technical assistance, financial advice, business planning services or other support. The business incubator program, however, does not necessarily have to involve the sharing of premises.

Cushion of credit payment—a voluntary unscheduled payment made after October 1, 1987, on an RUS note, which is credited to the cushion of credit account of a borrower.

Demonstration Project—a project for which the owner agrees in writing to provide RUS, if requested, with detailed information on the steps it takes in organizing and operating the project, will permit RUS and RUS's guests to make reasonable visits to the project, and honor any other reasonable RUS request to disseminate information on the project. Examples of information include a description of incorporation procedures, types of financing obtained, permits required by governments, amount of time required for various stages of the project, sources of technical assistance from government programs, private foundations or trade organizations, any experiences or lessons that the owner wishes to share with the public and other information which will assist RUS in promoting similar projects. It will not require the disclosure of trade secrets or proprietary techniques.

Electric or telephone purpose—a purpose that:

(1) The Administrator or Governor of the RTB is authorized to finance under sections 2, 4, 5, 201, 305, and 408 of the Act; or

(2) Is characterized as furnishing, generating or transmitting electric energy or other activities involved in providing electricity, or is characterized as providing telephone service. It will include electric and telephone facilities and equipment used in connection with providing such a service. It will not include a relatively insignificant amount of customer premises equipment, as determined by the Administrator.

Job creation—creation of jobs in rural areas. This includes the implementation of a project in close enough proximity to rural areas so that it is likely that the majority of the jobs created will be held by rural residents.

Letter of agreement—a legal document executed by the Administrator and the borrower that contains certain terms, conditions, requirements and understandings applicable to the zero-interest loan and/or grant, as determined by the Administrator.

Letter of credit—a commitment from a financial institution satisfactory to the Administrator to honor a draft drawn on the RUS borrower should the RUS borrower fail to pay on a zero-interest loan.

Pass-through-grant—a grant that the borrower makes to another entity that will own or undertake the project using the proceeds of the RUS grant.

Pass-through-loan—a loan that the borrower makes to another entity that will own or undertake the project using the proceeds of the RUS zero-interest loan.

Project—an undertaking that develops the economy of a rural area or results in job creation. As used in subpart B, the term “project” includes both direct undertakings by borrowers as well as those sponsored by other parties using the proceeds of pass-through-loans or pass-through-grants. It is the component or phase of the undertaking for which the borrower is requesting RUS funds, as determined by the Administrator.

Project feasibility studies—studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating and/or disseminating information for use in evaluating or developing a proposed project. For example, it would include market research and environmental studies.

REA means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

Reasonable loan servicing charges—charges for expenses the borrower incurs to service a loan provided to another entity unaffiliated with the borrower using the proceeds of the RUS zero-interest loan. The charges over the life of the loan for routine loan servicing expenses must not exceed an amount equal to the sum of one percent per year of the outstanding principal on the first day of each year on

the borrower’s RUS zero-interest loan. The charges for extraordinary expenses associated with collection of delinquent payments or other similar expenses must receive the prior approval of the Administrator.

Revolving loan program—a program established and operated by the Borrower, using grant funds, the Borrower’s contribution and loan repayments to make loans to businesses or others for rural economic development and job creation purposes.

RTB—the Rural Telephone Bank, established as a body corporate and an instrumentality of the United States, to obtain supplemental funds from non-Federal sources and utilize them in making loans, for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities, or systems, for RUS Borrowers financed under sections 201 and 408 of the Act.

Rural area—a rural area as defined in section 13 of the Act.

Rural economic development—job creation or preservation or community facilities improvement projects that clearly demonstrate significant benefits to rural areas.

Rural economic development account—a federally insured account into which the borrower deposits any advances of zero-interest loan funds from RUS until the borrower disburses the funds.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

Scope of work—a detailed plan, which has been approved by the Administrator, covering the work to be performed by the loan and/or grant recipient using the loan and/or grant funds.

Significant stockholder—an owner or holder of five percent or more of the common stock (or shares) or five percent or more of the preferred stock (or shares) of the RUS borrower.

Subaccount—the rural economic development subaccount created by section 313 of the Act.

Technical assistance—analysis of facilities or processes, managerial, financial and operational consultation by independent qualified entities to assist project owners to identify and evaluate problems or potential problems and provide training to enable project owners to successfully implement, manage, operate and maintain viable projects.

Tribal government—The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in 43 U.S.C. 1602) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11706, Mar. 14, 1994; 59 FR 53930, Oct. 27, 1994; 59 FR 66440, Dec. 27, 1994]

§ 1703.13 Source of funds.

Funds provided under this program come from interest differential credits to the subaccount and appropriated amounts made available to the subaccount.

§ 1703.14 Disposition of funds in the subaccount.

Zero-interest loans and grants will be made during each fiscal year to the full extent of the amounts held in the subaccount subject only to limitations imposed by law. For administrative purposes, the Administrator will make a determination of the fiscal year-end amount held in the subaccount as of a date prior to, but as near as practicable to, the end of the fiscal year.

§ 1703.15 [Reserved]

§ 1703.16 Eligibility.

Zero-interest loans and grants may be made to any borrower that is not delinquent on any outstanding Federal debt or in bankruptcy proceedings. However, a zero-interest loan or grant will not be made to a borrower during any period in which the Administrator has determined that no additional financial assistance of any nature should be provided to the borrower pursuant to any provision of the Act. The deter-

mination to suspend eligibility for assistance under this subpart will be based on one or more of the following factors:

(a) The borrower's demonstrated unwillingness to exercise diligence in repaying RUS loans or loan guarantees that results in the Administrator being unable to find that a loan, or loan guaranteed by RUS, would be repaid within the time agreed;

(b) The borrower's demonstrated unwillingness to meet requirements in RUS's legal documents or regulations; or

(c) Other actions on the part of the borrower that thwart the achievement of the objectives of the RUS program.

§ 1703.17 Uses of zero-interest loans and grants.

(a) Zero-interest loans and grants must be used exclusively to promote rural economic development and/or job creation projects, including, but not limited to, project feasibility studies, start-up costs, business incubator projects, and other reasonable expenses for the purpose of fostering rural economic development.

(b) The Administrator will give preference to providing funds under this subpart for projects other than business incubator projects to the extent funds are available to borrowers for business incubator projects from a rural business incubator fund administered by the Administrator in accordance with section 502 of the Act (7 U.S.C. 950aa-1).

(c) Zero-interest loans and grants may be used for Projects that enhance rural economic development by providing advanced telecommunications services and computer networks for medical and educational services, as follows: (1) For telecommunications end use and/or transmission facilities; and (2) Other portions of the project, such as modifications to buildings necessary to accommodate telecommunications equipment for medical care and other services, public or private education, and employment training.

(d) Zero-interest loans and grants may be used for community antenna television systems or facilities. The borrower will document that such facilities provide a tangible economic

benefit to the proposed service area in accordance with §1703.46 of this subpart. Notwithstanding this, the Administrator reserves the right to deny any proposal for community antenna television systems or facilities. Community antenna television systems or facilities will be considered for funding in accordance with §1703.46 of this subpart and this section only when all of the following conditions exist:

(1) The proposed community antenna television system or facility is established in cooperation with a local educational and/or medical entity(ies) to provide educational and/or medical programming which addresses specific needs of rural residents;

(2) Services to be provided by the proposed community antenna television systems or facilities are not available in the area to be served, or services are not being provided by the existing television programming carrier at an affordable cost to residents; and

(3) Such community antenna systems or facilities will not present undue competition for existing television programming carriers in the area.

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11706, Mar. 14, 1994; 59 FR 53930, Oct. 27, 1994]

§ 1703.18 Types of projects eligible for grant funding.

Grants may be made for the following purposes:

(a) The establishment and operation of a revolving loan program by Borrowers in accordance with §1703.22;

(b) Project feasibility studies to assist for-profit and non-profit entities in conjunction with a loan for an authorized project. Feasibility studies will include management assistance, consultation, and research for planning individual projects that the Borrower has determined will benefit the rural community. Feasibility studies which may be financed under this section must be performed by qualified entities subject to §1703.19, General requirements for grant funding. Feasibility studies must address the important aspects of project assessment and planning to ensure, to the extent practicable, the success of projects. These include the market, technical, economic, financial, and managerial issues related to project

feasibility. Feasibility studies may be funded in connection with viable projects as a reimbursement to the project owner for expenses incurred during the initial planning stages of the project prior to project funding by RUS;

(c) The acquisition of technical assistance in conjunction with projects funded with zero-interest loans to enable for-profit and non-profit entities to obtain analysis of facilities and processes, managerial, financial and operational consultation. Grant funds may also be used in conjunction with zero-interest loans to enable non-profit business incubators to provide technical assistance. Technical assistance will enable project owners to identify and evaluate problems or potential problems and provide training in order that they may ultimately implement, manage, operate and maintain viable projects which are financed with zero-interest loan funds. Technical assistance financed under this section must be performed by qualified entities which are independent of the project owner subject to §1703.19, General requirements for grant funding;

(d) Business incubators established by non-profit organizations to assist in developing emerging enterprises. Business incubators funded in conjunction with zero-interest loans will include those facilities in which single or multiple businesses may use premises, support staff, computer software, hardware, telecommunications equipment, machinery, janitorial services, utilities, or other overhead facilities. Grant funding may also be provided to allow business incubators to provide feasibility studies and technical assistance in accordance with paragraphs (b) and (c) of this section;

(e) Community development assistance to non-profit entities and public bodies for employment creation projects, or other projects which provide needed community facilities and services;

(f) Facilities and equipment to public, for-profit and non-profit entities to provide education and training to rural residents to facilitate economic development. Equipment and facilities may be funded to enable rural businesses to

provide educational and job enhancement skills to employees;

(g) Facilities and equipment to public, for-profit and non-profit entities to provide medical care to rural residents. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(h) Projects which utilize advanced telecommunications and/or computer networks to facilitate medical or educational services or job training in accordance with paragraphs (f) and (g) of this section.

[59 FR 11706, Mar. 14, 1994, as amended at 59 FR 38341, July 28, 1994]

§ 1703.19 General requirements for grant funding.

(a) Grants made under § 1703.18(a), establishment and operation of a revolving loan program by Borrowers, will be limited to Borrowers and can be made without zero-interest loans. Grants made under § 1703.18 (b) through (h) will be made only in conjunction with zero-interest loans, and on a pass-through basis.

(b) Pass-through grant funding for projects under § 1703.18 (b), (c), (f), (g) and (h) will be available for non-profit and for-profit entities. Pass-through grant funding for projects under § 1703.18 (d) and (e) will be available only for non-profit entities.

(c) All projects funded with zero-interest loans and grants will require supplemental funding in accordance with § 1703.23. For grants made under § 1703.18(a), the portion eligible for RUS funding may be fully funded with grant funds. For all other grants funded under § 1703.18, the portion of project costs eligible for RUS funding may be funded up to 20 percent with grant funds.

(d) Grant funding will be provided only to the extent necessary for a feasible project. A feasible project is a project which expects to generate sufficient income to pay operating expenses and debts and compensate for depreciation of equipment and facilities for the project which is to be funded by RUS. Depreciation must be based on allowable depreciation schedules as set forth by the United States Internal Revenue

Service. Borrowers whose analyses of projects show feasibility without grant funds should not apply for grant funding. Borrowers requesting pass-through grant funds will base grant funding requests on borrower projected income and expense projections for the project, and documentation regarding depreciation of the equipment and facilities for the project. The Administrator will determine whether the Borrower's projections of income, expenses and depreciation are reasonable.

(e) For projects that project insufficient operating revenue the first two years to show feasibility, borrowers should first consider the deferral provisions set forth in § 1703.29(b) before determining the appropriate level of requested grant funding. Zero-interest loan and grant funding will be approved in accordance with paragraph (d) of this section based on the option which results in the lowest required grant percentage.

(f) The owner of the pass-through project that receives grant funds will be encouraged to commit that the project will be a demonstration project.

(g) Borrowers or project owners must demonstrate the availability and commitment of other sources of funding needed to complete a project in addition to RUS loan and/or grant funds, prior to the first advance of RUS funds.

(h) Feasibility studies and/or technical assistance funded with grants under § 1703.18 (b) and (c) must be performed by entities which are independent of the Borrower and qualified to provide such services. The project owner, if deemed qualified in accordance with this paragraph, may furnish a feasibility study under § 1703.18(b). Entities furnishing technical assistance under § 1703.18(c), must be independent of the project owner. To be deemed qualified, entities providing feasibility studies and/or technical assistance must:

(1) Provide sufficient documentation evidencing their proven ability, background and experience to furnish such services; and

(2) Provide sufficient documentation evidencing their legal authority and capacity to furnish such services.

[59 FR 11706, Mar. 14, 1994]

§ 1703.20 Ineligible uses of zero-interest loans and grants.

(a) Zero-interest loans and grants must not be used:

(1) To fund or assist projects of which any director, officer, general manager or significant stockholder of the Borrower, or close relative thereof, is an owner, stockholder, partner or director, or which would, in the judgment of the Administrator, create a conflict of interest or the appearance of a conflict of interest. The Borrower must disclose to the Administrator information regarding any conflict of interest, potential conflict of interest or any appearance of a conflict of interest. The Administrator will determine whether there is a conflict of interest or whether any potential conflict of interest or appearance of a conflict of interest may adversely affect RUS's interests. A Borrower organized as, or consisting of a cooperative, widely held mutual corporation, tribal government, municipal power corporation, public power district, or a similar widely held organization would ordinarily be able to have an ownership interest in or manage a project operated on either a for-profit or non-profit basis. A Borrower organized as a closely held, for-profit corporation with more than 5 percent of its stock held by one legal person, its subsidiary or an affiliate, would ordinarily be able to own or manage a project operated on a non-profit basis only;

(2) For any costs incurred on the project:

(i) Prior to receipt of the Borrower's completed application by RUS during an application period unless the Administrator has specifically approved such usage in writing; or

(ii) For site development, the destruction or alteration of buildings, or other activities that would adversely affect the environment or limit the choice of reasonable alternatives prior to satisfying the requirements of § 1703.32;

(3) By the Borrower to purchase or lease any real property, materials, equipment, or services from its subsidiary, an affiliate, or significant stockholders, officers, managers or directors of the Borrower, or close relatives thereof, where the purchase or lease

has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(4) By the recipient of a pass-through-loan or pass-through-grant to purchase or lease any real property, materials, equipment, or services from the Borrower, its subsidiary, an affiliate of the Borrower, or significant stockholders, officers, managers or directors of the Borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(5) To pay off or refinance existing indebtedness incurred prior to receipt of the Borrower's completed application by RUS or for refinancing or repaying a loan made under the Act or a program administered by the Administrator;

(6) For any electric or telephone purpose, as determined by the Administrator;

(7) For the Borrower's electric or telephone operations or for any operations affiliated with the Borrower unless the Administrator has specifically informed the Borrower in writing that the operations are part of the approved purposes;

(8) To pay the salaries of any employee or owner of the Borrower, its subsidiaries, or affiliates. This restriction does not prohibit the use of loan or grant funds for printing and similar costs for project feasibility studies it has prepared, commissioned or purchased if specifically approved by the Administrator. This restriction is subject to the operating expense allowance for revolving loan funds set forth in § 1703.22 (a)(6);

(9) To fund feasibility studies and technical assistance as set forth in § 1703.18 independently of projects which are funded under the zero-interest loan and grant program;

(10) For community antenna television systems or facilities except as provided in § 1703.17(d) of this subpart;

(11) For proposed projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(12) For anything other than an approved purpose.

§ 1703.21

(b) [Reserved]

[59 FR 11707, Mar. 14, 1994, as amended at 59 FR 53930, Oct. 27, 1994]

§ 1703.21 Limitations on the use of zero-interest loan and grant funds.

(a) A borrower may not charge interest for the use of the proceeds of the zero-interest loan provided under this program; however, it may charge reasonable loan servicing charges, reasonable legal fees involved in providing the RUS funds to the recipient, and the amount paid for an irrevocable letter of credit made payable to RUS and issued on behalf of the borrower that guarantees repayment of an RUS zero-interest loan, all as determined by the Administrator. A borrower may require the recipient of a pass-through-loan to provide and/or obtain adequate security for the zero-interest loan funds.

(b) A borrower must calculate any costs to charge in connection with the use of grant funds under this program for the project and must temporarily deposit the grant funds in accordance with 7 CFR parts 3015, Uniform Federal Assistance Regulations, and 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as appropriate. Grant funds will be disbursed to the Borrower in accordance with § 1703.61(b).

(c) A borrower may not make a profit from any zero-interest loan or grant provided from the subaccount, with the exception of the \$500 interest income exclusion in paragraph (d) of this section.

(d) The Borrower may not requisition zero-interest loan funds unless those funds are deposited into the Borrower's RUS construction fund trustee account. The Borrower will be required to set up a separate Federally insured account called the Rural Economic Development Account, if loan funds are not expected to be disbursed within two months after receipt from RUS. All interest earned on temporarily deposited zero-interest loan funds in excess of \$500 per 12-month period must be used for approved purposes or returned to RUS. Interest earned in excess of \$500 per 12 month period and returned to RUS will not be used to reduce the Borrower's principal indebted-

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ness. Grant funds will be disbursed by RUS in accordance with 7 CFR parts 3015 and 3016, and § 1703.61 (b).

(e) The borrower may not condition the receipt of the proceeds of a zero-interest loan or grant under this subpart with the requirement that the recipient take electric or telephone service from the borrower.

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11708, Mar. 14, 1994]

§ 1703.22 Revolving loan program.

Grant funds under this section will be provided only to RUS Borrowers on a non pass-through basis. RUS Borrowers will, in turn, provide loans to foster rural economic development in accordance with this subpart and the specific requirements of this section.

(a) *General.* Grant funds disbursed to RUS Borrowers to establish revolving loan programs under this section are subject to the following requirements:

(1) The uses, restrictions and limitations for zero-interest loans set forth in §§ 1703.17, 1703.20 and 1703.21 respectively;

(2) Loans made by RUS Borrowers initially lending grant funds disbursed by RUS are limited to types of projects specified in § 1703.18 (d), (e), (f), (g) and (h). Loans may also be made for feasibility studies and technical assistance in accordance with § 1703.18 (b) and (c), respectively, but only for those types of projects specified in this paragraph (a)(2). Loans made from repayments of the initial loans made by RUS Borrowers may be used for any rural economic development purpose in accordance with a prior agreement between the Borrower and RUS;

(3) All other requirements relevant to zero-interest pass-through loans and grants outlined in this subpart, except the minimum size of a zero-interest loan as specified in § 1703.28(f);

(4) The initial loans made from the revolving loan fund using the grant funds must carry an interest rate of zero percent; however, loans made from repayments of the initial loan may carry an interest rate in accordance with prior agreement with RUS. In either case, the Borrower may charge reasonable loan servicing fees;

(5) The Borrower will provide a board resolution certifying a commitment to

provide and maintain additional funding to the revolving loan fund in an amount no less than 20 percent of the RUS grant approved. The Borrower will provide documentation that the additional funding has been deposited in the appropriate account in § 1703.22(h)(1) prior to grant disbursement. This requirement does not pertain to supplemental funding requirements for individual projects as set forth in § 1703.23. Additional funding required in this paragraph pertains only to borrowers establishing revolving loan funds, with the following provisions:

(i) Use of additional funding is subject to requirements set forth in paragraph (b) of this section and with RUS concurrence;

(ii) Individual projects funded under this section are subject to supplemental funds requirements set forth in § 1703.23;

(iii) At the Borrower's option with RUS concurrence, all or a portion of the additional funding may be used to assist project owners receiving funding from Federal grant funds under this section to meet their supplemental funding requirements set forth in § 1703.23 of this subpart. Such additional funding will be deemed as Federal funds and accounted for in accordance with paragraph (h)(1)(i)(A) of this section for electric borrowers or paragraph (h)(1)(ii)(A) of this section for telephone borrowers, as appropriate;

(iv) At the Borrower's option, all or a portion of the additional funding may be retained as non-Federal funds, for any rural economic development project(s), subject to paragraph (g) of this section and RUS concurrence. Additional funding committed as non-Federal will be accounted for in accordance with paragraph (h)(1)(i)(E) of this section for electric borrowers or paragraph (h)(1)(ii)(E) of this section for telephone borrowers, as appropriate;

(6) Grant funds will only be provided to an RUS Borrower for a revolving loan program when a proposed budget submitted to RUS demonstrates and the Borrower agrees in writing that no more than 10 percent of grant funds received are used to cover operating expenses of the revolving loan program.

Operating expenses include the costs of administering the revolving loan fund and the provision of technical assistance to project owners. All proceeds in excess of those needed to cover authorized expenses, as described above, must revert to the revolving fund and be available for re-lending for eligible projects. Budgets which reflect expenses incurred in operating the fund must be submitted to RUS annually;

(7) The Borrower may charge reasonable loan servicing charges. For purposes of this section, loan servicing charges must not exceed an amount equal to the sum of one percent per year of the outstanding principal on the first day of each year on each project owner's zero-interest loan which is made from the RUS grant proceeds;

(8) The Borrower will submit documentation indicating that potential projects which are eligible for funding have sufficiently progressed in the planning stage to allow grant funding approved for a revolving loan program to be requisitioned by the Borrower, disbursed by RUS, and loaned to recipients within 3 years of the date of grant approval by RUS. Grant funds that have not been requisitioned within 3 years will be cancelled, unless the Administrator has approved an extension in writing. Grant funds will be disbursed by RUS in accordance with paragraphs (d) and (g) of this section;

(9) If the revolving loan program is terminated, further disbursement of grant funds will be cancelled. Repayments of loans made using grant funds which have been disbursed will be used in accordance with the Borrower's rural development plan;

(10) Payment of creditors which provide interim or construction financing to a viable project for eligible purposes as set forth in § 1703.18 of this subpart may be authorized. Refinancing for the sole purpose of replacing higher interest conventional financing with zero-interest revolving loan funds is not authorized.

(b) *The Borrower's rural development plan.* RUS requires that the revolving loan program be administered in accordance with a rural development plan, developed by the Borrower and approved by RUS. The plan must be of

sufficient detail to provide RUS with a complete understanding of what the Borrower intends to accomplish by administering a revolving loan program. The rural development plan will provide the mechanics of how the revolving loan funds will be disbursed to the project owner. The rural development plan must outline the Borrower's plans for administering the revolving loan program, during the initial period when RUS grant funds are lent by the Borrower and after the revolving fund becomes non-Federal in accordance with paragraph (g) of this section. The plan must outline the following:

(1) Specific objectives for the revolving loan program, revolving loan operating procedures, lending parameters, maximum and minimum loan amount, and types of projects to be funded;

(2) Documentation of Borrower's coordination of lending activities with other local entities that provide financing for rural economic development projects. Such documentation will indicate that the Borrower will not compete with, but supplement other sources of legal financing;

(3) Eligibility criteria if other than outlined in this subpart;

(4) The application process and method of disposition of the funds to the project owner; and

(5) A procedure for monitoring the project owner's accomplishments and reporting requirements by the project owner's management.

(c) *The Borrower's scope of work.* Borrowers applying for grant funding under this section must submit a scope of work to RUS. Applications for grants under this section will be evaluated for funding based on the Borrower's rural development plan in paragraph (b) of this section and the scope of work. The scope of work must contain the following items:

(1) Documented need for grant funds. The Borrower must identify a sufficient number of rural development projects of the type specified in § 1703.18 (d), (e), (f), (g), and (h) which are currently being planned requiring zero-interest loans equal to the amount of grant assistance requested from RUS. These projects may be supported with a community facilities plan, or other development plan, prepared by local com-

munity leaders in cooperation with the Borrower. For each project, the Borrower will submit information required under § 1703.34;

(2) Documented authority and ability of the Borrower to administer a revolving rural development loan program in accordance with the provisions of this subpart. The Borrower must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience;

(3) Documented ability of the Borrower to commit financial resources under the control of the Borrower to assist in the establishment of a rural development revolving loan program. This should include a statement of the sources of funding for the administration of the Borrower's operations, as well as financial and technical assistance for projects;

(4) Documentation that the Borrower has secured commitments of significant financial support from public agencies and/or private organizations for supplemental funding to support a rural development loan program;

(5) A list of proposed fees and other charges the Borrower will assess the projects it funds; and

(6) The Borrower's rural development policy for non-Federal funds in accordance with paragraphs (b) and (g) of this section.

(d) *Grant processing and approval.* Applications for grants to establish revolving loan funds will be reviewed in accordance with §§ 1703.45 and 1703.46, and with the Borrower's rural development plan and scope of work outlined in paragraphs (b) and (c) of this section. Grants will be processed in accordance with §§ 1703.58 and 1703.59.

(e) *Disbursement of grant funds.* Borrowers are not authorized to commence projects to be funded under this section until those projects have been submitted for authorization in accordance with paragraph (c)(1) of this section, or the projects have been submitted for authorization subsequent to grant approval in accordance with paragraph (e)(2) of this section. RUS grant funds will be disbursed on a reimbursement basis. However, upon written justification by borrowers and approval by the Administrator, borrowers unable to

fund projects under reimbursement provisions, for financial or other extraordinary reasons, may receive grant funds under the special disbursement method by submitting unpaid invoices from project owners, and grant funds will be disbursed to borrowers and passed directly to project owners. In either case, RUS grant funds will be disbursed in accordance with the provisions of 7 CFR Part 3015, Uniform Federal Assistance Regulations, the applicable requirements of this subpart, the administrative provisions outlined in paragraph (g) of this section, and the following requirements:

(1) Only projects authorized by RUS in accordance with paragraphs (c)(1) and (e)(2) of this section, for which adequate documentation is submitted, including receipts for expenditures under the reimbursement method or unpaid invoices under the special disbursement method, as applicable, and certification of approved purposes, will be considered for disbursement;

(2) A project which was not submitted prior to grant approval in accordance with paragraph (c)(1) of this section, may be authorized for funding subsequent to grant approval. A project which is authorized for funding under this paragraph will be considered for disbursement at the first allowable time period after project authorization in accordance with paragraphs (e)(3) and (e)(4) of this section. Project authorization after grant approval is subject to the following requirements:

(i) The project meets the specific objectives for the Borrower's revolving loan program as outlined in paragraph (b)(1) of this section;

(ii) The Borrower presents evidence that the project requested for authorization can be funded prior to projects which were authorized prior to grant approval in accordance with paragraph (b)(1) of this section; and

(iii) RUS approves the project for funding in accordance with § 1703.34;

(3) Under the reimbursement method, grant funds requisitioned for individual projects in increments of less than \$100,000, or less than 25 percent of the amount approved for the revolving loan fund, whichever is less, may be disbursed semi-annually. Submission periods for requisitioning grant funds on a

semi-annual disbursement basis will be 14 days commencing from the 6-month anniversary date of grant approval. Grant funds under the special disbursement method will be requisitioned in accordance with the applicable provision in paragraph (e)(4) of this section;

(4) For the reimbursement method, grant funds requisitioned for individual projects in increments of \$100,000 or greater, or at least 25 percent of the amount approved for the revolving loan fund, whichever is less, may be submitted for disbursement at any time. Under the special disbursement method, grant funds of less than \$100,000 may be requisitioned for disbursement at any time. However, the minimum requisition will be \$50,000, or the total grant award, whichever is less.

(f) *Reporting requirements.* (1) The Borrower must maintain financial management systems and retain financial records in accordance with 7 CFR part 3015, Uniform Federal Assistance Regulations.

(2) Borrower records must include an accurate accounting and source documentation to support each transaction involving the revolving loan fund. Records are subject to a rural economic loan review as set forth in § 1703.66(g).

(3) SF-269, "Financial Status Report," and a revolving loan program activity report will be required of all Borrowers on an annual basis. Reports will be submitted no later than 90 days after December 31 of each year. The program activity report will contain an aggregate list of projects funded, the amount funded for each project, the project repayment schedule, a brief description of each project, the project objectives, whether or not the project has been completed, and the projected number of jobs created or saved by each project. Reports under this paragraph will be required until all grant funds have been disbursed and projects completed.

(4) A performance report will be required for each project funded on an annual basis. Performance reports will be due no later than 90 days after December 31 of each year. Performance reports will be submitted until one year after project completion. Project

performance reports will contain the following:

(i) A comparison of actual accomplishments during the reporting period to the objectives established for the project and, if not attained, reasons why established objectives were not met;

(ii) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated to resolve the situation;

(iii) Projected accomplishments for the next reporting period, if applicable; and

(iv) Status of compliance with any special conditions for project funding, if applicable.

(5) Borrowers must report and remit interest earned on advances of grant funds deposited in interest accounts to RUS on a quarterly basis in accordance with 7 CFR part 3015, Uniform Federal Assistance Regulations.

(g) *Non-Federal funds.* Once all RUS-derived grant funds have been utilized by the Borrower to fund rural development projects according to the provisions of this section and the applicable provisions of this subpart, loans made by the Borrower thereafter from repayments to the revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on the Borrower or project owners. However, the Borrower will, as a condition for receiving a grant under this section, agree to the following conditions:

(1) To maintain a revolving loan account to promote rural economic development in accordance with the Borrower's rural development plan for non-Federal funds submitted in accordance with paragraph (b) of this section;

(2) To maintain the additional funding supplied by the Borrower in accordance with paragraph (a)(5) of this section and interest earnings within the revolving loan fund;

(3) Approval may be granted by the Administrator to terminate the revolving

loan program, or modify the requirements set forth in paragraphs (g)(1) and (g)(2) of this section, upon written request and justification by the Borrower. Should the Borrower terminate the revolving loan program without obtaining approval by the RUS Administrator, the Borrower will return the amount of the original grant to RUS.

(h) *Administrative provisions.* The requirements of this paragraph set forth the procedures for accounting, requisitioning and disbursement of Federal funds, those funds initially disbursed for projects which may be funded in accordance with an approved rural development plan and scope of work submitted by the Borrower. Disbursement of grant funds will be approved on a reimbursement basis after the grant agreement is executed by RUS and the Borrower, the applicable provisions of this subpart are met, subject to disbursement restrictions in paragraph (e) of this section, and the requirements in paragraphs (h) (1) through (3) of this section.

(1) *Accounting requirements.* Accounting will be performed in accordance with 7 CFR part 1767, Accounting Requirements for RUS Electric Borrowers, or 7 CFR part 1770, Accounting Requirements for RUS Telephone Borrowers, as appropriate. The Borrower will maintain accounts for the revolving funds as follows:

(i) *RUS electric Borrowers.* (A) A general ledger Account 131.13, "Cash-General—Economic Development Grant Funds." The Borrower will debit this account in an amount equal to the amount of the grant received from RUS, any additional funds deemed Federal from the Borrower as required by paragraph (a)(5)(iii) of this section, and all other funds advanced for the project, regardless of the source, if controlled by the Borrower. The Borrower will credit this account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 124.1, "Other Investments—Federal Economic Development Loans." The Borrower will debit this account in the amount of Federal funds the Borrower

advances to non-associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section. This account will be credited with repayments of loans made with Federal economic development grant funds.

(C) A general ledger Account 123.3, "Investment in Associated Companies—Federal Economic Development Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section. This account will be credited with repayments of loans made with Federal economic development grant funds.

(D) Account 421, "Miscellaneous Non-operating Income." The Borrower will credit this account in the amount of grant funds disbursed by RUS resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 131.14, "Cash-General—Economic Development Non-Federal Revolving Funds." The Borrower will debit this account with any additional funds deemed non-Federal from the borrower as required by paragraph (a)(5)(iv) of this section, cash received from the repayment of loans made from accounts in paragraphs (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(i)(F), and (h)(1)(i)(G) of this section. The Borrower will credit this account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(i)(F) and (h)(1)(i)(G) of this section.

(F) A general ledger Account 124.2, "Other Investments—Non-Federal Economic Development Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to non-associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section. This account will be credited with repay-

ments of loans made from non-Federal economic development funds.

(G) A general ledger Account 123.4, "Investment in Associated Companies—Non-Federal Economic Development Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(H) A general ledger Account 171 "Interest and Dividends Receivable." The Borrower will debit this account with the amount of interest earned on the revolving loan fund. The Borrower will credit this account and debit the appropriate cash account when the cash is received.

(I) A general ledger Account 419, "Interest and Dividend Income." The Borrower will credit this account with the amount of interest earned on the revolving loan fund.

(ii) *RUS telephone Borrowers.* (A) A general ledger Account 1130.4, "Cash—General Fund—Economic Development Grant Funds (Class A Companies)", or Account 1120.14, "Cash-General Fund—Economic Development Grant Funds (Class B Companies)." The Borrower will debit the appropriate account in an amount equal to the amount of the grant received from RUS, any additional funds deemed Federal from the Borrower required by paragraph (a)(5)(iii) of this section, and all other funds advanced for the project, regardless of the source, if controlled by the Borrower. The Borrower will credit the appropriate account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 1402.4, "Other Investments in Nonaffiliated Companies—Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be

made in the appropriate account in paragraph (h)(1)(ii)(A) of this section. This account will be credited with repayments of loans made from Federal economic development grant funds.

(C) A general ledger Account 1401.1, “Other Investments in Affiliated Companies—Federal Economic Development Grant Loans.” The Borrower will debit this account in the amount of Federal funds the Borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section. This account will be credited with repayments of loans made from Federal economic development grant funds.

(D) Account 7360, “Other Non-operating Income (Class A Companies)”, or Account 7300, Non-operating Income and Expense (Class B Companies), as appropriate. The Borrower will credit these accounts, as appropriate, in the amount of grant funds disbursed by RUS resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 1130.5, “Cash—General Fund—Economic Development Non-Federal Revolving Funds (Class A Companies)”, or Account 1120.15, “Cash—General Fund—Economic Development Non-Federal Revolving Funds (Class B Companies)”, as appropriate. The Borrower will debit the appropriate account with any additional funds deemed non-Federal from the Borrower as required by paragraph (a)(5) of this section, cash received from the repayment of loans made from accounts in paragraphs (h)(1)(ii)(B), (h)(1)(ii)(C), (h)(1)(ii)(F), and (h)(1)(ii)(G) of this section. The Borrower will credit the appropriate account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(ii)(F) and (h)(1)(ii)(G) of this section.

(F) A general ledger Account 1402.5, “Other Investments in Nonaffiliated Companies—Non-Federal Economic Development Grant Loans.” The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to nonaffiliated organi-

zations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(G) A general ledger Account 1401.2, “Other Investments in Affiliated Companies—Non-Federal Economic Development Grant Loans.” The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(H) A general ledger Account 1210, “Interest and Dividends Receivable.” The Borrower will debit this account with the amount of interest earned on the revolving fund loan. The borrower will credit this account and debit the appropriate cash account when the cash is received.

(I) A general ledger Account 7320, “Interest Income (Class A Companies)”, or Account 7300.2, “Interest Income (Class B Companies)”, as appropriate. The Borrower will credit this account with the amount of interest earned on the revolving fund loans.

(2) *Requisition requirements.* Grant funds may be requisitioned by RUS Borrowers in accordance with disbursement requirements in paragraph (e) of this section. Borrowers will be fully reimbursed for funds expended for approved projects funded. For each completed project, the Borrower will submit the following for reimbursement:

- (i) Standard Form 270, “Request for Advance of Reimbursement”;
- (ii) Copies of cancelled checks and other verifiable source records supporting the transactions; and
- (iii) Certification and evidence that the project costs to be reimbursed are for a project which has been authorized by RUS and are authorized costs for that project.

(3) *RUS review.* Requisition requests will be evaluated for compliance with loan purposes previously submitted by the Borrower for project authorization in accordance with paragraphs (c)(1) or (e)(2) of this section, compliance with the Borrower's rural development plan, accounting documentation submitted in paragraph (h)(1) of this section, and the cancelled checks and source records submitted.

[59 FR 11708, Mar. 14, 1994, as amended at 59 FR 38341, July 28, 1994; 59 FR 53931, Oct. 27, 1994]

§ 1703.23 Supplemental funds requirements for zero-interest loans and grants.

The Administrator will not select an application unless the project will receive supplemental funds in an amount at least equal to 20 percent of the RUS zero-interest loan and grant to be provided to the project, as determined by the Administrator. Supplemental funds as used in this section may come from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower or other sources. Only supplemental funds that will be provided to the project after the date RUS receives the borrower's completed application may be used to satisfy this requirement. Supplemental financing must be verified and committed to the project in form and substance satisfactory to the Administrator before RUS will advance any funds.

§ 1703.24 [Reserved]

§ 1703.25 Significance of RUS financing to the total project cost.

Selection of applications will be based on a preference for applications requesting RUS financing which will be at least equal to 5 percent of the total project costs, as determined by the Administrator. Projects costs will be based on the amount that would be spent over the first 2 years after the first advance of RUS funds for the component or phase of the undertaking for which the borrower is requesting RUS funds, as determined by the Administrator. The Administrator may determine that a component or phase, espe-

cially actions necessary to initiate a larger project, constitute a distinct project for the purposes of this section.

§ 1703.26 [Reserved]

§ 1703.27 Owner's equity in the project.

The Administrator may require, as a condition to RUS financing, that the owner(s) of the project invest equity capital if determined to be financially necessary, based on an RUS financial analysis and sound lending practices.

§ 1703.28 Maximum and minimum sizes of a zero-interest loan or grant application.

(a) The maximum size of an application that will be considered for funding under this subpart during a fiscal year will be 3 percent of the projected total amount available for the zero-interest loans or grants under section 313 of the Act during that fiscal year, rounded to the nearest \$10,000. This determination will be made by the Administrator for each fiscal year.

(b) Regardless of the projected total amount that will be available, the maximum size may not be lower than \$200,000.

(c) The projected total amount available during a particular fiscal year is calculated as the sum of the projected amount that will be credited to the subaccount during a particular fiscal year from the interest differential calculation based on the RUS borrowers' cushion of credit levels at the time the Administrator makes the determination and any amounts appropriated for that fiscal year for zero-interest loans or grants made under section 313 of the Act.

(d) After the Administrator has determined the maximum size for a fiscal year, a notice of the calculation and amount will be published promptly in the FEDERAL REGISTER. Thereafter, the maximum size will remain in effect until the Administrator has published the maximum size for the next fiscal year.

(e) All unselected applications on file at RUS, including both loan and grant applications, from the same borrower for the same project will be considered to be one application in determining

that the maximum size of the application is in accordance with this section.

(f) The minimum size of an application for assistance under this subpart that will be considered for funding is \$10,000.

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11711, Mar. 14, 1994]

§ 1703.29 Terms of zero-interest loan repayment.

(a) The Administrator will determine the terms and repayment schedule of the zero-interest loan to the borrower based on the nature of the project and approved purposes. Ordinarily, the total term of the zero-interest loan, including any principal deferment period, will not exceed 10 years. The repayment terms the borrower sets on a pass-through-loan must equal the terms of the loan provided to the borrower unless a written request from the borrower to provide a longer deferment period, shorter total term of the loan, or other benefits is approved by the Administrator.

(b) The Administrator has the discretion to defer the repayment of principal up to two years, based on an analysis of the feasibility of the project. Ordinarily, if the Administrator considers the project to be a business expansion or going concern, the first repayment of principal will not begin until one year after the date of the RUS note. Ordinarily, if the Administrator considers the project to be a start-up project, the first repayment of principal will not begin until 2 years after the date of the RUS note. Loans must be repaid under terms set forth in RUS's legal documents.

(c) Unless the Administrator has specifically approved otherwise, the borrower will be required to repay the RUS zero-interest loan in full at such time as a pass-through-loan has been fully repaid to the borrower. If the borrower uses the proceeds of the RUS zero-interest loan to provide pass-through-loans to more than one entity, this requirement will only apply to that portion of the zero-interest loan associated with the loan that has been fully repaid to the borrower.

(d) If the Administrator determines that, as a result of state law, court rulings, or regulatory commission deci-

sions, it is necessary to ensure that the borrower will repay the RUS zero-interest loan, the borrower may be required to provide an irrevocable letter of credit, or another form of guarantee satisfactory to the Administrator. The letter of credit or other guarantee is to be made payable to RUS. The letter of credit or other guarantee may not be secured by any assets under a RUS and/or Rural Telephone Bank mortgage and must be in form and substance satisfactory to the Administrator. RUS must receive the letter of credit or other guarantee prior to the advance of any zero-interest loan funds.

§ 1703.30 Approval of agreements.

(a) The Administrator must approve any agreements between the borrower and the owner(s) of the project, those undertaking the project, or any intermediary that will re-lend or transfer the proceeds of the RUS funds, that the Administrator deems necessary.

(b) Borrowers must obtain the Administrator's approval of any loan, grant or security agreement, mortgage or note between the borrower and the owner(s) of the project, those undertaking the project or any intermediary that will re-lend or transfer the proceeds of the RUS funds, prior to the advance of RUS zero-interest loan or grant funds to the borrower. The borrower must receive the Administrator's approval of the final draft version of the documents prior to their execution.

(c) Borrowers must obtain the Administrator's written approval prior to revising or amending any loan, grant or security agreement, mortgage or note that has been reviewed and approved by the Administrator pursuant to paragraph (b) of this section. Additionally, the borrower must obtain the Administrator's written approval prior to executing, revising or amending any other agreement, in connection with the project, between the borrower and the owner(s) of the project, those undertaking the project or any intermediary that will re-lend or transfer the proceeds of the RUS funds.

(d) The borrower and the owner(s) of the project, or those undertaking the project, should make agreements and

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prepare documents in accordance with all applicable laws.

(Approved by the Office of Management and Budget under control number 0572-0090)

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11711, Mar. 14, 1994; 59 FR 38341, July 28, 1994]

§ 1703.31 Transfer of employment or business.

The project must not result primarily in the transfer of any existing employment or business activity from one area to another.

§ 1703.32 Environmental requirements.

(a) Prospective recipients of zero-interest loans or grants should consider the potential environmental impact of their proposed projects at the earliest planning stage and plan development in a manner that reduces, to the extent practicable, the potential to affect the quality of the human environment adversely.

(b) *Application for zero-interest loans or grants for project feasibility studies.* For a proposal to fund a project feasibility study, the only environmental information normally required is whether or not the proposed project being studied or analyzed will be located within an area protected under the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*) Generally, the use of Federal funds to promote development on coastal barriers is strictly limited by the Coastal Barriers Resources Act.

(c) *Application for zero-interest loans or grants for a project that is not considered project feasibility studies.* (1) The Administrator will review support materials in the application and initiate an environmental review process pursuant to 7 CFR part 1794. This process will focus on any environmental concerns or problems that are associated with the project.

(2) The level and scope of the environmental review will be determined in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Policy for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), RUS's environmental policies and procedures (7 CFR part 1794) and other

relevant Federal environmental laws, regulations and Executive Orders.

(3) Activity related to the project that will adversely affect the environment or limit the choice of reasonable alternatives must not be undertaken prior to completion of RUS's environmental review process.

§ 1703.33 Other considerations.

(a) *Equal opportunity and non-discrimination requirements.* All zero-interest loans and grants made under this subpart are subject to the non-discrimination provisions of title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. 1971 *et seq.*, 1975a *et seq.*, 2000a *et seq.*; 7 CFR part 15); section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 701 *et seq.*; 7 CFR part 15b); the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*; 45 CFR part 90); and Executive Order 11246, Equal Employment Opportunity, (3 CFR, 1964–1965 Comp., p. 339) as amended by Executive Order 11375, Amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR, 1966–1970 Comp., p. 684).

(b) *Architectural barriers.* All facilities financed with RUS zero-interest loans or grants that are open to the public or in which physically handicapped persons may be employed or reside must be designed, constructed, and/or altered to be readily accessible to, and usable by handicapped persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, (42 U.S.C. 4151 *et seq.*) and with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 CFR part 101.19, subpart 101-19.6).

(c) *Flood hazard area precautions.* In accordance with 7 CFR part 1788, if the project is in an area subject to flooding, flood insurance must be provided to the extent available and required under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 *et seq.*). The insurance must cover, in addition to the buildings, any machinery, equipment, fixtures and furnishings contained in the buildings. RUS will comply with Executive Order 11988, Floodplain Management (3 CFR, 1977 Comp., p. 117), and § 1794.41 of this chapter, in considering the application for the project. As set forth in § 1794.41 of

this chapter, public notice is required if a project will be located in a floodplain.

(d) *Uniform relocation assistance.* Relocations in connection with this program are subject to 49 CFR part 24 as referenced by 7 CFR Part 21, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs except that the provisions in Title III, Uniform Real Property Acquisition Policy, of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, (42 U.S.C. 4601–4655) (the “Uniform Act”) do not apply to this program.

(e) *Drug-free workplace.* Grants made under this program are subject to the requirements set forth in 7 CFR part 3017, subpart F, Drug-Free Workplace Requirements, which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*). A borrower requesting a grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(f) *Debarment and suspension.* The requirements of Executive Order 12549, Debarment and Suspension (3 CFR, 1986 Comp., p. 189), and 7 CFR part 3017, subparts A through E, Governmentwide Debarment and Suspension (Non-procurement), regarding debarment and suspension are applicable to this program.

(g) *Intergovernmental review of Federal programs.* (1) This program is subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs (3 CFR, 1982 Comp., p. 197) and 7 CFR part 3015, subpart V, Intergovernmental Review of Department of Agriculture Programs and Activities, which implements Executive Order 12372.

(2) With the exception of zero-interest loans and grants for project feasibility studies, proposed projects are subject to the state and local government review process set forth in 7 CFR part 3015. Under the review process, state and local governments have 60 days to comment on the proposed project.

(3) The Administrator will not give final approval to an application until the requirements of 7 CFR part 3015,

subpart V, regarding state and local government review have been satisfied.

(h) *Restrictions on lobbying.* (1) The restrictions and requirements imposed by 31 U.S.C. 1352, entitled “Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions” and the implementing regulation, 7 CFR part 3018, New Restrictions on Lobbying, are applicable to this program.ca 7v15.018

(2) The regulation that implements this statute requires applicants for a zero-interest loan in excess of \$150,000 and applicants for a grant in excess of \$100,000 to file a certification statement regarding the use of Federal appropriated funds to lobby the Executive and Legislative branches of the Federal Government, and to file a disclosure form if engaged in these activities using unappropriated funds.

(3) In addition, persons that receive contracts or subcontracts in excess of \$150,000 under a zero-interest loan and persons that receive subgrants, contracts or subcontracts in excess of \$100,000 under a grant are required to file certification statements regarding lobbying the Executive and Legislative branches and, if engaged in these activities, to file disclosure forms.

§ 1703.34 Applications.

(a) Borrowers may file an application on any official workday during the first 14 days of every month. A borrower must send a copy of the application, except for an application that requests a zero-interest loan or grant for project feasibility studies, to the state single point of contact for state and local governments at the same time it submits the application to RUS. As discussed in §1703.33(g), state and local governments have 60 days to review a borrower’s proposal before the Administrator gives final approval to an application, except a proposal for project feasibility studies. The Administrator may establish a special application period if determined necessary.

(b) A completed application will consist of an original and two copies of:

(1) *An application form.* The application must include a completed application form, “Application for Federal Assistance,” Standard Form 424;

(2) *A board resolution.* The application must include a board resolution that:

(i) Requests a zero-interest loan and/or grant, including the amount of the zero-interest loan and/or the amount of the grant rounded to the nearest 1,000 dollars;

(ii) Includes the total combined deferment and repayment period requested for a zero-interest loan if less than 10 years;

(iii) Includes the board's endorsement of the proposed rural economic development project as described in the application;

(iv) States the proposed project does not violate §§1703.20 and 1703.21; and discloses any information regarding a conflict of interest, potential conflict of interest, or appearance of a conflict of interest that would allow the Administrator to make an informed decision;

(v) Authorizes an official of the borrower to requisition zero-interest loan or grant funds under this program;

(vi) For an application for a grant only, authorizes the chief executive officer of the borrower to execute and deliver on behalf of the borrower the certification Form AD-1049 regarding a drug-free workplace program as required in part 3017, subpart F of this title; and

(vii) Any other matters deemed necessary by the Administrator;

(3) *Miscellaneous Federal forms.* The application must include the following completed forms:

(i) Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions," as required in part 3015, subparts A through E of this title; and

(ii) Assurance statement or certification statement required under the Uniform Act as set forth in §1703.33(d). For pass-through-loans and pass-through-grants, the ultimate recipient of the proceeds of the RUS zero-interest loan or grant must sign the assurance statement that it will comply with the applicable provisions of the Uniform Act or sign a certification that the provisions of the Uniform Act will not apply to the rural development project which will be partially financed with the proceeds of RUS funds. If the

borrower will not provide a pass-through-loan or pass-through-grant to another entity, the borrower must submit a completed assurance statement or certification regarding the applicable provisions of the Uniform Act, or have such an assurance statement on file at RUS;

(4) *Contingent certifications and disclosures.* As determined by the type and amount of requested funds, the application must include the following completed forms:

(i) For an application for a zero-interest loan in excess of \$150,000 or for an application for a grant in excess of \$100,000, a certification statement, "Certification Regarding Lobbying," and, if the borrower is engaged in lobbying activities described under §1703.33(h), a completed disclosure form, "Disclosure of Lobbying Activities"; and

(ii) For an application for a grant only, a completed certification form, "Certification Regarding Drug-Free Workplace Requirements (Grants)," Form AD-1049 as required in part 3017, subpart F of this title;

(5) *Other requirements.* The following:

(i) A section entitled "Selection Factors" as set forth in §1703.35;

(ii) A section entitled "Project Description" as set forth in §1703.36;

(iii) Except for applications for project feasibility studies, a section entitled "Environmental Impact of the Project" as set forth in §1703.37;

(iv) Monitoring plan. For a pass-through loan and/or grant, a copy of the Borrower's plan to monitor the loan and/or grant and ensure that the requirements of this subpart are met; and

(v) Scope of work. For an application for a loan and/or grant, a proposed scope of work for the project.

(c) The Administrator may request additional information it considers relevant from the borrower.

(d) During the application review process, the borrower may change the amount of the zero-interest loan or grant funds requested or other portions of its application, only if approved by the Administrator. A borrower that changes its request from a grant to a

zero-interest loan must submit information necessary for the Administrator to evaluate a loan proposal as set forth in this subsection, and submit a new board resolution requesting the loan.

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under control number 0572-0090)

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11711, Mar. 14, 1994; 59 FR 38341, July 28, 1994]

§ 1703.35 Section of the application covering the selection factors.

The application must contain a section addressing the “selection factors” consisting of the following:

(a) “Nature of the project” (§1703.46(g)(1)), which includes any information considered appropriate including aspects of the project that may not be obvious to an outside observer;

(b) “Job creation project” (§1703.46(g)(2)), which includes any information that is not readily apparent concerning whether the project would directly create jobs in rural areas. The number of the jobs and the basis for the job projection should be included under “Number of long-term jobs”;

(c) “Long-term improvements in economic development” (§1703.46(g)(3)), which addresses the extent to which the project will improve the productive potential of the labor force, industrial plant, infrastructure, natural resources and institutions by employing advanced technology, creating higher-skilled occupations, adding higher value to natural resources, creating jobs with higher-career potential, or is considered part of a knowledge intensive industry;

(d) “Diversifying the rural economy or alleviating underemployment” (§1703.46(g)(4)), which includes any information the borrower desires the Administrator to consider;

(e) “Supplemental funds” (§1703.46(h)(1)), which includes the name of each source and the respective amount of supplemental funds that was provided to the project within 6 months of submitting the application to RUS, and the amount that will be provided within two years of receiving RUS funds. Also indicate the nature

and strength of the commitments to make these supplemental funds available, when these funds are expected to be disbursed, any special terms and conditions associated with the commitments, copies of the commitments, and, if established, the interest rate, term and deferment period on any loan for the project;

(f) “Economic conditions and job creation” (§1703.46(h)(2)), which includes:

(1) “Unemployment rates” (§1703.46(h)(2)(i)). List the county or counties in which the project will be located. It is not necessary to include the county, state or national unemployment rates. RUS obtains these rates from other Federal agencies;

(2) “Per capita personal income” (§1703.46(h)(2)(ii)). As with “Unemployment rates,” it is not necessary to include the county, state or national per capita personal income levels;

(3) “Change in population” (§1703.46(h)(2)(iii)). It is not necessary to include the county population levels;

(4) “Number of long-term jobs” (§1703.46(h)(2)(iv)). Include the number of long-term jobs that the project will directly create in rural areas and the total project cost;

(5) “Community-based economic development program” (§1703.46(h)(2)(v)). Explain if the project is part of a community-based economic development program; and

(6) “Plan for improving the marketable skills of people in rural areas” (§1703.46(h)(2)(vi)). Include information on any written plan for the project to provide opportunities or incentives to improve the marketable skills of rural residents through training and/or education. For projects that consist of providing training or education, indicate how it will benefit rural residents;

(g) “Location” (§1703.46(h)(3)), which indicates whether or not the project will be located in a town and, if so, the name of the town;

(h) “Support for the program—cushion of credit payments” (§1703.46(h)(4)), which mentions any cushion of credits payments made recently in accounts at RUS;

(i) “Demonstration project” (§1703.46(h)(5)), which includes a discussion of any commitments from the

owner(s) of the project to be a demonstration project and a copy of the written commitment;

(j) "Probability of success" (§ 1703.46(h)(6)), which includes:

(1) "Owners and management of the project" (§ 1703.46(h)(6)(i)) that discusses how the knowledge, experience, education and training of the proposed owners and management of the project increases the likelihood of long-term success; and

(2) "Ultimate recipient's business plan" (§ 1703.46(h)(6)(ii)), that references an attached copy of the business plan.

(i) The plan should include:

(A) A description of the project;

(B) A description of the business, if applicable, its products and the prospects of the industry;

(C) What will be produced or accomplished;

(D) The area to be served;

(E) Any market research or marketing plan;

(F) Any operating plan;

(G) Total project costs and projected use of funds by purpose or category;

(H) A financial plan, including a feasibility study with projected balance sheets, income statements and cash flow statements;

(I) The source of supplemental funds, the nature and strength of commitments from other sources of financing, and the equity contribution;

(J) The proposed ownership and management of the project;

(K) A description of any coordination with a local, regional or state development organization; and

(L) Other relevant information.

(ii) The scope of the plan should reflect the amount requested in the application, the risks involved with developing and operating the project, and the overall cost of the project. The plan should describe any coordination with a local, regional or state development organization.

§ 1703.36 Section of the application covering the project description.

In general, this section should be more detailed the larger the project for which the borrower is requesting funding. The section of the application on the "project description" must include:

(a) A description of the proposed project including the nature of the project, the location of the project, organizations that will be involved in the project and the primary beneficiaries of the project. Also include in this subsection a statement describing whether the borrower has or will have a direct or indirect (through a subsidiary or affiliated organization) ownership or similar beneficial interest in the facilities to be constructed or in the entity that will occupy or utilize these facilities. In addition, explain whether it seems likely that the proposed project will be undertaken or completed in the absence of an RUS zero-interest loan or grant;

(b) A separate paragraph entitled "Uses of RUS Funds and Total Project Costs", that includes a breakdown of the specific uses of RUS funds and a breakdown of the specific uses of all funds necessary to ensure completion of the project. Project costs should be limited to the amount to be spent over the 2-year period after receiving RUS funds;

(c) For a project that involves the establishment of a new venture, such as a rural business incubator or a similar start-up venture, a discussion of how the costs of establishing, organizing and arranging financing for the venture will be paid, how start-up costs incurred after the venture has been established will be paid, the expected sources of revenue necessary to sustain the project and revenue and expense projections for the first 3 years of the project;

(d) If the borrower will provide a pass-through-loan or pass-through-grant to another entity, outline the terms and conditions that the borrower intends to place on the recipient of the RUS funds including the security arrangements and collateral on a zero-interest loan. The discussion of proposed security arrangements and collateral should reflect the amount requested in the application, the risks involved with developing and operating the project, and the overall cost of the project;

(e) For pass-through-loans and pass-through-grants, a description of the ultimate recipient, including the form of

organization and ownership (i.e., corporation, nonprofit corporation, cooperative, partnership, sole proprietor), the owner(s) and the chief officers;

(f) If the project involves construction, a brief description of the construction necessary to make the project operational and the organization involved with the project that will be responsible for building the project facilities or having them built;

(g) A discussion of the manner in which the borrower intends to monitor the zero-interest loan and/or grant proceeds to ensure that they are used only for approved purposes; and

(h) If applicable, a discussion on any potential conflict of interest or the appearance of a conflict of interest, a clarification of any aspect of the project with respect to the restriction that it must not result primarily in the transfer of any existing employment or business activity from one area to another or a clarification of any aspect of the project with respect to limitations in §§ 1703.20 and 1703.21.

§ 1703.37 Section of the application covering the environmental impact of the project.

(a) For a proposed project that only involves internal modifications or equipment additions to buildings or other structures (for example; relocating interior walls or adding computer facilities) and/or external changes or additions to existing buildings, structures or facilities requiring physical disturbance of less than 0.4 hectare (0.99 acre), the environmental information normally required is:

(1) A copy of a flood hazard zone map from the Federal Emergency Management Agency with the location of the project site marked;

(2) A statement of whether or not the proposed project will be located within an area protected under the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(3) A description of the internal modifications or equipment additions, and the external changes or additions to existing buildings, structures or facilities being proposed, the size of the site in hectares, and the general nature of the proposed use of the facilities once the project is completed, includ-

ing any hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated; and

(4) A statement of whether the project site contains or is near a property listed or eligible for listing in the National Register of Historic Places (16 U.S.C. 470).

(b) For all other proposed projects include:

(1) A copy of a flood hazard zone map from the Federal Emergency Management Agency with the location of the project site marked (42 U.S.C. 4001 *et seq.*);

(2) A diagram showing the general layout of the proposed facilities on the project site;

(3) The size of the project site in hectares;

(4) A map (preferably a U.S. Geological Survey map) of the project area indicating the boundaries of the project;

(5) A statement of whether or not the project will be located within an area protected under the Coastal Barrier Resources Act;

(6) The amount of property to be cleared, excavated, fenced or otherwise disturbed by the project;

(7) The current land use and zoning of the project site and any vegetation on the project site;

(8) A description of buildings or other major structures, including dimensions, to be constructed or modified;

(9) A statement of whether the presence of wetlands or existing agricultural operations are present at the project site (7 CFR part 1794); whether properties listed or eligible for listing in the National Register of Historic Places are on or near the project site; whether threatened or endangered species or critical habitat are on or near the project site (16 U.S.C. 1531 *et seq.*);

(10) The general nature of the proposed use of the facilities once the project is completed, including any hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated (7 CFR part 1794); and

(11) A copy of any environmental review, study, assessment, report or other document that has been prepared

in connection with obtaining permits, approvals or other financing for the proposed project from state, local or other Federal agencies. Such material, to the extent relevant, may be used to fulfill the requirements of this section.

(c) The Administrator may request additional environmental information in specific cases to satisfy § 1703.32.

§§ 1703.38—1703.44 [Reserved]

§ 1703.45 Review and analysis of applications.

Completed applications received at RUS by the 14th day of the month will be considered at the first selection date which occurs at least 40 days after the application was received. Completed applications received at RUS after the 14th day of a month will be either be held for the next application period or returned to the borrower, at the borrower's option. The review period of at least 40 days should allow sufficient time for state and local governments to review the proposed projects under the intergovernmental review process, as set forth in 7 CFR part 3015, and to provide sufficient time for the Administrator to fully review and analyze these applications. In the event state and local government review has not been completed, the Administrator's approval may be contingent upon the review being satisfactorily documented. The Administrator reserves the discretion to consider applications outside the normal selection period.

§ 1703.46 Documenting the evaluation and selection of applications for zero-interest loans and grants.

(a) The Administrator will only consider for selection applications that request funds for purposes as set forth in §§ 1703.17 and 1703.18 and are not ineligible under § 1703.20, as determined by the Administrator. The Administrator will not consider applications that do not conform with all of the provisions of this subpart, as determined by the Administrator. The Administrator will make the determination of all numbers, dollars, levels and rates, as well as the nature, costs, location and other characteristics of the proposed project, to calculate the number of points assigned to an application for each selection factor. Applications for zero-inter-

est loans and grants will be ranked separately. In addition, applications requesting less than 5 percent of the total project costs as provided in § 1703.25 will be ranked separately, subject to § 1703.46(j). The Administrator will select applications that receive the greatest number of total points under paragraphs (f) and (g) of this section, subject to available funds and the provisions of §§ 1703.25, 1703.46(i), and 1703.46(j).

(b) After reviewing an application, the Administrator may decline to select an application:

(1) That would result in a conflict of interest or the appearance of a conflict of interest;

(2) Based on the management and financial situation of the borrower applying for the zero-interest loan or grant. In determining the borrower's financial situation, the Administrator will consider, among other things, the borrower's existing and projected cash flows, equity to asset ratios, times interest earned ratios, debt service coverage ratios, the level of its investments, the level of its cash and other liquid assets, its working capital and repayment of its debts;

(3) Based on a determination that limitations under state laws will lessen the likelihood of repayment of the RUS zero-interest loan in the event that the borrower does not receive funds from the project necessary to cover the RUS zero-interest loan payments;

(4) Based on the unwillingness of the borrower applying for the zero-interest loan or grant to exercise diligence in repaying RUS loans or loan guarantees, and comply with RUS's legal documents and regulations;

(5) For an otherwise eligible project when any of the revenues of the project are derived from a legalized gambling activity; or

(6) For any illegal activity.

(c)(1) The Administrator will first evaluate the application and the project with respect to the three factors in this paragraph. The Administrator will not select applications requesting funds for projects that in the Administrator's best judgment have a low probability of:

(i) Being a viable business or operation;

(ii) Being successful as measured by long-term job creation or retention; and

(iii) Producing long-term economic development in rural areas.

(2) The Administrator's determination in paragraph (c) of this section will be based on the ultimate recipient's feasibility studies, income statements, cash flow statements, existing and projected balance sheets, market research, job creation potential, industry trends, and current economic conditions given the nature of the project. Long-term job creation and economic development in rural areas as used for this factor will mean jobs or economic development that would generally be expected to last at least five years.

(d) The Administrator will not award points under the selection factors in paragraphs (f) and (g) of this section for applications that:

(1) Involve the purchase land that will not be developed or used as a site for a project structure during the current phase of the project, as determined by the Administrator;

(2) Will be used for residential purposes or entertainment purposes at the residential level, such as residential dwellings and land sites, facilities to provide entertainment television, or personal, non-business related vehicle(s); however, nursing homes providing medical care, as determined by the Administrator, will not be considered to be residential dwellings;

(3) Will be used primarily to finance the purchase of an established business or operation rather than for economic development in rural areas or job creation purposes; or

(4) Will be used primarily to transfer property or real estate between owners without making any improvements or additions that will promote economic development in rural areas or job creation.

(e) After the above determinations, the Administrator will evaluate the applications and assign points with respect to the factors in paragraph (f) of this section. Applications evaluated under paragraph (f) of this section that do not receive at least 35 points or are not within the top 75 percent when all applications being assigned points are ranked from high to low by total num-

ber of points will not be evaluated with respect to the factors in paragraph (g) of this section. The only exception to this evaluation process would be the Administrator's determination that additional applications must be selected in accordance with §1703.14. After such a determination, the remaining applications evaluated in paragraph (f) of this section will be also evaluated under the factors in paragraph (g) of this section.

(f) *Selection factors pertaining to the type of project.* The number of points assigned for each selection factor will be determined as follows:

(1) *Nature of the project.* The extent to which the nature of the project will promote economic development in rural areas and/or job creation—up to 50 points. The determination for this factor will be based on whether the project:

(i) Is considered a start-up, expansion, or enhancement of a business, a business incubator, an industrial building or park, infrastructure necessary to connect these types of projects to existing infrastructure, necessary for the development and operation of these types of projects, or, in the Administrator's determination, basic infrastructure necessary for successful businesses in the rural economy;

(ii) Will provide technical assistance to rural businesses or rural residents, train or educate rural residents, promote economic development in rural areas on a non-profit basis, or provide medical care to rural residents; and

(iii) Will succeed as envisioned in the application, and the possibility that the owners or operators may become delinquent on their loan payments.

(2) *Job creation project.* The extent to which the project will directly lead to job creation given the size of the project and the amount of RUS funds requested or the project is necessary for job creation—up to 25 points. As part of the determination, the Administrator will consider whether the project will provide long-term employment for rural residents. For industrial parks, industrial buildings, and similar projects, the Administrator will consider whether the application includes information on businesses or tenants that will occupy the building(s) and the

nature and extent of the commitments to use the buildings in determining the number of points to award. The Administrator will also consider the probability that the project will not result in job creation as envisioned in the application in terms of both the number of jobs and the duration of the jobs.

(3) *Long-term improvements in economic development.* Projects that lead directly to an increase in long-term productivity and per capita income in rural areas—up to 25 points. The Administrator's determination will be based on the extent to which the project will improve the productive potential of the labor force, industrial plant, natural resources, institutions, and infrastructure necessary for economic development and job creation by utilizing advanced technology, creating higher skilled occupations, creating jobs with higher career potential or jobs that are considered part to be of a knowledge intensive industry, or adding higher value to natural resources. In considering infrastructure projects, the Administrator will award points only for the facilities, such as water and sewer facilities, that will serve and are necessary for commercial activities described under this factor.

(4) *Diversifying the rural economy or alleviating underemployment.* Projects that in the judgement of the Administrator will diversify the rural economic base or assist in alleviating chronic underemployment for rural residents—10 points. The Administrator will assign points only to the extent the application contains convincing evidence pertaining to this factor.

(g) *Other selection factors.* The number of points assigned for each selection factor will be determined as follows:

(1) *Supplemental funds.* (i) A determination of the amount of supplemental funds provided or to be provided to the project from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower or other sources of funds. The supplemental funds used in this calculation must be disbursed to the project during the period covering six months prior to the receipt of the application by RUS and two years after the first advance of

RUS funds for the project. Supplemental funds must be committed to the project before RUS will advance its funds. RUS loan or grant funds from the borrower or RUS loan or grant funds from any other organization will not be included in the calculations. The Administrator will determine what constitutes expenditures on the project. If supplemental funds as a percentage of the RUS zero-interest loan and/or grant to be provided to the project is:

(A) Equal to 20%—10 points, the minimum number of points;

(B) Equal to 100%—20 points;

(C) Equal to 500%—30 points, the maximum number of points.

(ii) Ratios of supplemental funds to RUS funds falling between these levels will be assigned points based on a straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(2) *Economic conditions and job creation.* (i) A comparison will be made of the unemployment rate in the county where the project will be located to the state and national unemployment rates.

(A) If the unemployment rate in the county where the project will be located exceeds the National unemployment rate by 30 percent or more—10 points, the maximum number of points awarded.

(B) If the unemployment rate in the county where the project will be located is equal to the National unemployment rate—5 points.

(C) If the unemployment rate in the county where the project will be located is equal to or less than 75 percent of the National unemployment rate—0 points.

(D) If the unemployment rate in the county where the project will be located exceeds the state unemployment rate by 30 percent or more—8 points, the maximum number of points awarded.

(E) If the unemployment rate in the county where the project will be located is equal to the state unemployment rate—4 points.

(F) If the unemployment rate in the county where the project will be located is equal to or less than 75 percent of the state unemployment rate—0 points.

(G) For both the state and national unemployment rate calculations, rates falling between the levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the average of the most recent twelve months of unemployment rates it has obtained from the Bureau of Labor Statistics, U.S. Department of Labor or other government sources and processed into a suitable format.

(ii) A comparison will be made of the per capita personal income in the county where the project will be located to the state and national per capita personal income levels.

(A) If the per capita personal income level in the county where the project will be located is less than or equal to 90 percent of the National per capita personal income level—10 points, the maximum number of points awarded.

(B) If the per capita personal income level in the county where the project will be located is equal to the National per capita personal income level—5 points.

(C) If the per capita personal income level in the county where the project will be located exceeds the National per capita personal income level by 15 percent or more—0 points.

(D) If the per capita personal income level in the county where the project will be located is less than or equal to 90 percent of the state per capita personal income level—8 points, the maximum number of points awarded.

(E) If the per capita personal income level in the county where the project will be located is equal to the state per capita personal income level—4 points.

(F) If the per capita personal income level in the county where the project will be located exceeds the state per capita personal income level by 15 percent or more—0 points.

(G) For both the state and national per capita personal income calculations, incomes falling between the levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the most recent annual per capita personal income levels it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce or other government sources and processed into a suitable format.

(iii) A calculation will be made of the change in total population over the most recent two-year period in the county where the project will be located. The population change will be based on the total percentage change over the two-year period calculated as follows: the population for the most recent year less the population as of two years prior to that year with the difference being divided by the population as of two years prior to the most recent year.

(A) If the percentage growth over the two-year period is negative 2.00 percent or higher negative amount (a population decline)—8 points, the maximum number of points.

(B) If the percentage growth over the two-year period is equal to zero or is positive (population increase)—0 points.

(C) Population growth percentages falling between these levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1. If the project will be located in several counties, the Administrator will use a simple average (mean) of the counties for the comparison. The Administrator will use the most recent population data for all counties it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce or other government sources and processed into a suitable format. The data provide one population figure for the year.

(iv) The number of long-term jobs that the project will directly create in rural areas.

(A) For five or more direct long-term jobs per \$100,000 of total project costs—15 points, the maximum number of points awarded.

(B) For two direct long-term jobs per \$100,000 of total project costs—8 points.

(C) For no direct long-term jobs—0 points.

(D) Direct, long-term jobs under this factor are jobs that would generally be expected to last at least five years. Long-term jobs that would provide 6 months per year of equivalent full-time employment will be counted under this factor. Long-term jobs that would provide fewer months of employment would be given points based on the ratio of the number of months per year of employment to 12 months. Jobs of at least 20 hours per week will be counted under this factor. For construction of an industrial building, extension of water and/or sewer lines to a building, or a similar project, the Administrator will require a reasonable analysis of the number of jobs that will be created before awarding points for this factor. The Administrator reserves the right to adjust the number based on its analysis of the project, the explanation in the application of the businesses that will locate in the building(s), and any commitments from businesses to locate in the building(s). This factor will not count indirect job creation that results from an overall increase in the local economy once the project is completed. If total project costs per job falls between these levels, points will be assigned based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(v) Projects that are part of a local, community-based rural economic development program that would improve the local economy and enhance the well-being of rural residents—10 points. The determination will be based on information submitted by the borrower in its application and other information the Administrator considers appropriate.

(vi) Projects that have a written plan to provide opportunities or incentives

to improve marketable skills for rural residents through training and/or education, or projects which consist of providing this training and/or education—5 points.

(3) *Location*. Projects that will be physically in a rural area—20 points.

(4) *Support for program—cushion of credit payments*. (i) Applications submitted by borrowers that have made cushion of credit payments as set forth in section 313 of the Act based on the following:

(A) If the borrower has \$300,000 or three percent of total assets, whichever is less, in cushion of credit payments—15 points;

(B) If the borrower has \$100,000 or one percent of total assets, whichever is less, in cushion of credit payments—10 points;

(C) If the borrower has at least \$5,000 or 0.5 percent of total assets, whichever is less, in cushion of credit payments—5 points.

(ii) The amount of cushion of credit payments will be based on the amount at the time the Administrator evaluates the project. The calculation of a borrower's total assets will be based on RUS's most recently published Statistical Report, Rural Electric Borrowers (RUS Informational Publication 201-1) or Statistical Report, Rural Telephone Borrowers (RUS Informational Publication 300-4). These publications are available from the Rural Utilities Service, Administrative Services Division, Washington, DC 20250. If the amount of cushion of credits payments falls between these levels, points will be based on a straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(5) *Demonstration project*. If the application contains a written commitment from the owner(s) of the project that the project will be a demonstration project—5 points.

(6) *Probability of Success*. (i) The knowledge, experience, education and training of the proposed owners and management of the project—up to 10 points.

(ii) The ultimate recipient's business plan and indications that the project

will successfully result in economic development in rural areas and/or job creation—up to 40 points. The Administrator's evaluation of the success of the project will be based on indications in the application and RUS's analysis that the project will be a viable business or operation, be successful in creating or retaining long-term jobs, and be successful in producing economic development that will result in long-term benefits to rural areas. The plan should include:

- (A) A description of the project;
- (B) A description of the business, if applicable, its products and the prospects of the industry;
- (C) What will be produced or accomplished;
- (D) The area to be served;
- (E) Any market research or marketing plan;
- (F) Any operating plan;
- (G) Total project costs and projected use of funds by purpose or category;
- (H) A financial plan, including a feasibility study with projected balance sheets, income statements and cash flow statements;
- (I) The source of supplemental funds, the nature and strength of commitments from other sources of financing, and the equity contribution;
- (J) The proposed ownership and management of the project;
- (K) A description of any coordination with a local, regional or state development organization; and
- (L) Other relevant information.

(iii) The Administrator expects the ultimate recipient's business plan referenced in paragraph (g)(6)(ii) of this section to be comparable to a plan normally submitted to a bank for long-term financing. In evaluating an application for this selection factor, the Administrator will consider the probability that the project will result in long-term economic development in rural areas and/or job creation as envisioned in the application.

(iv) Quality and completeness of borrower's initial application submitted to RUS—up to 10 points. The Administrator's determination will be based on the completeness and quality of the application as measured by the additional information required from the borrower to complete the analysis. For a

pass-through loan and grant, the quality of the Borrower's plan to monitor the loan and grant and assure that the requirements of this subpart and 7 CFR parts 3015 and 3016 are met will also be considered.

(7) *Special economic status.* The Administrator has the discretion to designate special economic status (up to 25 points) to applications submitted by borrowers that have documented one or more of the following four conditions in one or more county(ies) to be served by the proposed project:

(i) A designation of disaster area by the President of the United States which has been so designated within three years prior to applying to RUS;

(ii) The loss, removal, or closing of a major source or sources of employment in the last 3 years which causes an increase of 2 percentage points or more in the area's most recent unemployment rate compared with the period immediately before the dislocation;

(iii) Chronic or long-term economic deterioration, documented by one or both of the following conditions:

(A) An unemployment level equal to or greater than 1.5 times the National average unemployment percentage from 4 out of the last 5 years, starting with the most current statistics available. The applicant, when calculating recent years' unemployment percentages, should compare county statistics with the National Average unemployment for the corresponding year. Statistics on unemployment will be based on figures provided by the U.S. Bureau of Labor Statistics. However, the Administrator may, at his discretion, also consider verifiable, published State statistical data provided by the applicant in situations where county-wide statistical data is not representative of local conditions. Such statistical data must be part of a recognized database which reflects information for other areas within the State;

(B) A 15% loss of population due to out-migration over the most recent 10-year decennial census, based on the U.S. Bureau of the Census decennial data;

(iv) A designation as a Rural Empowerment Zone or Rural Enterprise Community by the Empowerment Zone Program authorized by Section 13301 of

Rural Utilities Service, USDA

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the Omnibus Reconciliation Act of 1993, Public Law 103-66 (107 Stat. 312), 26 U.S.C. 1391-1393.

(h) *Outline of selection factors.* The selection factors contained in §§ 1703.46(f) and 1703.46(g) and the maximum number of points that may be assigned to each is listed below:

- (1) *Nature of the project*—50 points;
 - (2) *Job creation project*—25 points;
 - (3) *Long-term improvements in economic development*—25 points;
 - (4) *Diversifying the rural economy or alleviating underemployment*—10 points;
 - (5) *Supplemental funds*—30 points;
 - (6) *Economic conditions and job creation*:
 - (i) *Unemployment rates*—18 points;
 - (ii) *Per capita personal income*—18 points;
 - (iii) *Change in population*—8 points;
 - (iv) *Number of long-term jobs*—15 points;
 - (v) *Community-based economic development program*—10 points;
 - (vi) *Plan for improving the marketable skills of people in rural areas*—5 points;
 - (7) *Location*—20 points;
 - (8) *Support for program*—cushion of credit payments—15 points;
 - (9) *Demonstration project*—5 points;
 - (10) *Probability of success*:
 - (i) *Owners and management of the project*—10 points;
 - (ii) *Ultimate recipient's business plan*—40 points; and
 - (iii) *Completeness of borrower's initial application*—10 points;
 - (11) *Special economic status*—25 points.
- (i) Regardless of the number of points assigned to a borrower's application, the Administrator may:

(1) Limit the number of applications selected in any one state during any fiscal year to the ratio of borrowers in that state to the total number of borrowers multiplied by three, or ten percent of the total number selections that have been made during the current fiscal year, or ten, whichever is greatest. The number of borrowers will be determined as of the latest published RUS statistical reports (Statistical Report, Rural Electric Borrowers, RUS Informational Publication 201-1 and Statistical Report, Rural Telephone Borrowers, RUS Informational Publication 300-4. These publications are available from the Rural Utilities

Service, Administrative Services Division, Washington, DC 20250);

(2) Limit a borrower to one selected application during any selection period;

(3) Limit the number of applications selected for a particular project;

(4) Allocate available funds between applications from electric and telephone borrowers;

(5) Select an application receiving fewer points than another application if there are insufficient funds during a particular budget period to select the higher ranked application; except that the Administrator may ask the borrower that submitted the higher ranked application if it desires to reduce the amount of its application to the amount of funds available. The reduction may require additional supplemental funds to ensure a successful project. Based on information the borrower provides, the Administrator will re-analyze the project to ensure that the project will still be feasible with reduced funding; or

(6) Select the highest ranking applications for funds to finance projects that the Administrator classifies as project feasibility studies.

(j) During each selection period, the highest ranking application from among the applications requesting less than 5 percent of the total project costs as provided in § 1703.25 will be considered with the applications requesting 5 percent or more of total project costs.

(k) The Administrator reserves the right to use the region or data it considers most appropriate if "county" data are unavailable for a particular area.

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11711, Mar. 14, 1994; 59 FR 38341, July 28, 1994; 59 FR 53931, Oct. 27, 1994]

§§ 1703.47—1703.57 [Reserved]

§ 1703.58 Post selection period.

(a) RUS will inform a borrower whether the Administrator has selected its application. The advance of RUS funds after the selection has occurred is contingent upon the borrower meeting any terms and conditions the Administrator determines are necessary. A borrower that submitted an

application which was not selected will be asked to inform RUS whether it desires to be reconsidered at a later date. The borrower may modify the application after it has been considered without resubmitting all the required material in an application, except if it changes the request from a grant to a zero-interest loan it must submit information necessary for the Administrator to evaluate a loan proposal as set forth in §§1703.35 and 1703.36 and submit a new board resolution requesting a loan. If the borrower so desires, the Administrator will consider an application for up to one year after the date RUS originally received the application. A borrower may submit new applications as often as it desires.

(b) During the period between the selection of the application and the execution of RUS's legal documents, the borrower must inform the Administrator if the project is no longer viable or the borrower no longer desires a zero-interest loan or grant for the project. Upon a determination by the Administrator to that effect, the selected application will be considered cancelled.

(c) If an application has been selected and the nature of the project changes, as determined by the Administrator, the borrower may be required to submit a new application to RUS for consideration. The selection may not be transferred to another project, as determined by the Administrator. At any time after the selection of an application, the Administrator may, upon a request from the borrower and receipt of any documentation the Administrator considers necessary, approve changes in the method of carrying out the purpose of the project as long as the overall purpose of the project remains the same, revise the amount of the zero-interest loan and/or grant, revise the loan maturity date and principal deferment period and make other adjustments. The Administrator may reduce the amount of the RUS loan or grant to reflect reductions in the amount of supplemental funds to be provided to the project. For substantial reductions in amount of supplemental funds to be provided to the project, the Administrator may require the bor-

rower to re-apply for the RUS loan or grant funds.

(d) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within three months of the Administrator's selection of the application, the Administrator may consider the selection of the application cancelled.

§1703.59 Final application processing and legal documents.

(a) After a borrower has submitted all information the Administrator determines is necessary for the selected application, RUS will send the necessary legal documents to the borrower to execute and return to RUS. The legal documents will include a letter of agreement and any legal documents the Administrator deems appropriate, including any loan agreements, notes, security instruments, certifications or legal opinions. The letter of agreement will, among other things, constitute the Administrator's approval of funds for the project subject to certain terms and conditions as determined by the Administrator, and include a project description, approved purposes of the zero-interest loan and/or grant, the maximum amount of zero-interest loan and/or grant, supplemental funds to be provided to the project and certain agreements or commitments the borrower proposed in its application.

(b) The Administrator has the discretion to include as an approved purpose the reimbursement of short-term financing and expenditures that were used for costs incurred on the project in accordance with §1703.20(a)(2).

(c) If the borrower fails to submit within one month from the date of the Administrator's selection of an application all of the information that the Administrator determines to be necessary for RUS to prepare legal documents, the Administrator may consider the selection of the application cancelled.

§1703.60 [Reserved]

§1703.61 Disbursement of zero-interest loan and grant funds.

(a) RUS will disburse zero-interest loan funds to the borrower which must

disburse zero-interest loan proceeds to the project for approved purposes in accordance with the legal documents executed by the Administrator and the borrower and applicable RUS regulations. The borrower must make payments on a zero-interest loan as set forth in the legal documents executed by the Administrator and the borrower. The Borrower or project owner's share in the cost of the project must be utilized in advance of RUS zero-interest loan funds, or upon RUS approval, on a pro-rata distribution basis with loan funds during the disbursement period. The Borrower or project owner will not be permitted to provide its contribution at the end of the loan disbursement period.

(b) RUS will disburse grant funds to the borrower which must disburse grant proceeds to the project for approved purposes in accordance with the provisions of 7 CFR part 3015 and 7 CFR part 3016, as appropriate, the legal documents executed by the Administrator and the borrower, and applicable RUS regulations. Prior to the disbursement of grant funds under this subpart, the Borrower will provide evidence of fidelity bond coverage as required by 7 CFR 3015.17. The grant portion of a pass-through zero-interest loan and grant will be disbursed to the Borrower on a reimbursement basis after all other project funds have been utilized and evidence is provided that the project has been completed. Grants to Borrowers for establishment of revolving loan funds will be disbursed in accordance with § 1703.22 of this subpart.

(c) If the borrower fails to satisfy all conditions, requirements, and terms prerequisite to the advance of zero-interest loan and/or grant funds as set forth in the letter of agreement or other RUS legal documents within 120 days from the date the borrower signs the letter of agreement agreeing and accepting the conditions, requirements, and terms of the RUS zero-interest loan and/or grant, or such later date as the Administrator may approve, the Administrator may rescind the zero-interest loan and/or grant commitment.

(d) During the period between the execution of RUS's legal documents and the disbursement of funds, the bor-

rower must provide the Administrator written notification if the project is no longer viable or the borrower no longer desires a zero-interest loan or grant for the project. After RUS has received the borrower's notification, the Administrator will rescind the commitment.

(e) The borrower must return to RUS all proceeds of the zero-interest loan and/or grant, including any interest earned on the funds being returned, which have not been lent or disbursed by the borrower for approved purposes during the six months following the advance of the loan or grant funds from RUS to the borrower, or such later date as the Administrator may approve. If the project is under the control of the borrower, all proceeds of the zero-interest loan and/or grant must be returned to RUS, including any interest earned on the funds being returned, which have not been expended by the borrower for approved purposes before the first anniversary of the date of the advance of the loan or grant funds from RUS to the borrower, or such later date as the Administrator may approve. Authorization of any extension rests solely within the discretion of the Administrator.

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11712, Mar. 14, 1994]

§§ 1703.62—1703.65 [Reserved]

§ 1703.66 Review and other requirements.

(a) RUS will review borrowers receiving zero-interest loans or grants, as necessary, to ensure that funds are expended for approved purposes. Borrowers receiving zero-interest loans or grants must monitor the project to the extent necessary to ensure that the project is in compliance with all applicable regulations, including ensuring that funds are expended for approved purposes. The borrower is responsible for ensuring that disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or any other forms of evidence determined appropriate by the Administrator and that such supporting material is available, at the borrower's premises, for review

by the RUS field accountant, borrower's certified public accountant, the Office of Inspector General, the General Accounting Office and any other accountant conducting an audit of the borrower's financial statements or this rural economic development program. Borrowers will be required to permit RUS to inspect and copy its records and documents that pertain to the project.

(b) The Borrower must require the recipient of a pass-through loan and grant to provide an itemized list to the Borrower that shows the expenditures made on the project for approved purposes, including a certification to that effect. The Borrower will also require the recipient to attach invoices, receipts, bills of sale, and other evidence representing the items on the list of expenditures that at least total the amount of the RUS zero-interest loan and grant. In addition, the Borrower will also require the recipient to furnish a record of itemized receipts showing total project costs in such detail that will permit auditors to establish the RUS funding percentage. RUS's legal agreements will include the terms and conditions that the Borrower must require in its agreement with the recipient of a pass-through loan and grant covering the use and intended schedule of expenditures of the loan funds.

(c) RUS's legal documents may require the borrower to include in its legal documents with the recipient of a pass-through loan or a pass-through grant the requirement to expend the funds for approved purposes by a certain date specified in RUS's legal documents or return to the borrower all funds that have not been expended by such date. The borrower must promptly return to RUS all unexpended funds that the recipient returns to the borrower under the terms set forth in the legal documents executed between the Administrator and the borrower. The borrower may request an extension due to delays in the project. Authorization of any extension rests solely within the discretion of the Administrator.

(d) The legal documents executed between the Borrower and the Administrator in connection with a zero-interest loan and/or grant must contain cer-

tain provisions giving the Administrator discretionary rights and remedies in the event a Borrower fails to comply with this subpart, other Federal regulations and statutes, or the terms, conditions and requirements of the executed legal documents. Regardless of any right or remedy the Administrator chooses to assert, if the Borrower uses any zero-interest loan and/or grant funds other than for approved purposes, the Borrower will be required to return to RUS the amount used for unapproved purposes. An unauthorized zero-interest loan amount which is returned will be considered a prepayment on the RUS note.

(e) Borrowers receiving zero-interest loans and/or grants will be subject to a rural economic development review of zero-interest loan and grant funds.

(f) The borrower must promptly notify the Administrator in writing if another entity is in default on a pass-through-loan between the borrower and the entity.

(g) Grants provided under this program will be administered in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate. Copies of these USDA Uniform Assistance regulations can be obtained by contacting RUS in Washington, DC. A Borrower that receives a grant for the establishment of a revolving loan fund, or project owner that receives a pass-through loan and grant, will be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audit requirements. For pass-through loans and grants, RUS Borrowers will be required to include in their legal documents the requirement for project owners to provide sufficient financial, accounting and budget information and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016 for non-profit entities, and RUS rural economic development loan reviews for projects in a for-profit status.

(h) For pass-through loans and grants awarded under this subpart, the Borrower must diligently monitor performance to ensure that time schedules are being met, projected work by time

periods is being accomplished, and other performance objectives are being achieved. The Borrower must submit an original and one copy of each report to RUS on an annual basis. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why any established objectives were not met;

(3) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(i) For pass-through loans and grants, a final project performance report will be required with the last SF 269, "Financial Status Report," available from RUS in Washington, DC. The final report also must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(j) Monitoring requirements for Borrowers receiving grants for revolving loan funds are specified in § 1703.22.

[57 FR 44317, Sept. 25, 1992, as amended at 59 FR 11712, Mar. 14, 1994]

§ 1703.67 Changes in project objective or scope.

For loans and grants awarded under this subpart, the Borrower must obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can

result in suspension or termination of grant funds.

[59 FR 11712, Mar. 14, 1994]

§ 1703.68 Loan and grant termination provisions.

(a) *Termination for cause.* The Administrator may terminate any loan and/or grant in whole, or in part, at any time before the date of completion of loan and/or grant disbursement, whenever the Borrower has failed to comply with the conditions of the loan and/or grant. The Administrator will promptly notify the Borrower in writing of the termination and the reasons for the termination, together with the effective date. The termination date will be no less than 30 days following receipt of the termination notice. The Borrower will have such time to cure the default, or to state why it feels the loan and/or grant should not be terminated. The Administrator will stay the termination upon the curing of the default, and may delay termination if, sufficient cause has been given by the Borrower.

(b) *Termination for convenience.* The Administrator or the Borrower may terminate a loan and/or grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The Borrower will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will allow full credit to the Borrower for the Federal share of unfulfilled contractual obligations which were incurred in good faith by the Borrower prior to grant termination.

[59 FR 11712, Mar. 14, 1994]

§§ 1703.69—1703.79 [Reserved]

**Subpart C—Rural Business
Incubator Program [Reserved]**

§§ 1703.80—1703.99 [Reserved]

**Subpart D—Distance Learning and
Telemedicine Loan and Grant
Program**

SOURCE: 62 FR 32437, June 13, 1997, unless otherwise noted.

§ 1703.100 Purpose.

The purpose of this subpart is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents.

§ 1703.101 Policy.

(a) RUS recognizes that the transmission of information is vital to the economic development, education, and health of rural Americans. To further this objective, RUS will award loans and grants under this subpart to distance learning and telemedicine projects that will improve the access of people residing in rural areas to improved educational, learning, training, and health care services. Unless a distinction is made in the various sections of this subpart, all aspects of this subpart will apply to all requests for financial assistance.

(b) In providing assistance under this subpart, RUS will give priority to rural areas that it believes have the greatest need of distance learning and telemedicine services. RUS believes that generally the need is greatest in economically challenged areas and those requiring high costs to serve. This program is consistent with provisions of the 1996 Telecommunications Act (Public Law 104–104, 110 Stat. 56) that designates telecommunications service discounts for schools, libraries, and rural health care providers providing benefits to rural end-users. RUS will take into consideration the community's involvement in the project and the applicant's ability to leverage

grant funds based on its access to capital.

(c) RUS believes that the residents of rural areas and their local institutions which serve them can best determine what are the most appropriate communications or information systems for use in their respective communities. Therefore, in administering this subpart, RUS will not favor or mandate the use of one particular technology over another.

(d) All rural institutions are encouraged to cooperate with each other and with applicants and end users in promoting the program being implemented under this subpart.

(e) RUS staff will make diligent efforts to inform potential applicants in rural areas of the program being implemented under this subpart.

(f) Financial assistance under this subpart will consist of grants or cost of money loans, or both. The Administrator shall determine the portion of the financial assistance provided to a recipient that consists of grants and the portion that consists of cost of money loans so as to result in the maximum feasible repayment to the government of the financial assistance, based on the ability of the recipient to repay and with the full utilization of funds made available to carry out this subpart.

(g) The Administrator may provide a cost of money loan to entities using telemedicine and distance learning services, and, to entities providing or proposing to provide telemedicine service or distance learning service to other persons at rates calculated to ensure that the benefit of the financial assistance is passed through to the other persons.

(h) The Administrator may provide a cost of money loan under this subpart to a borrower of a telecommunications or electric loan under the Rural Electrification Act of 1936, as amended. A borrower receiving a cost of money loan under this subpart shall:

(1) Make the funds provided available, under any terms it so chooses as long as the terms are no more stringent than the terms under which it received the financial assistance, to entities that qualify as distance learning

or telemedicine projects satisfying the requirements of this subpart.

(2) Use the funds provided to acquire, install, improve, or extend a system referred to in this subpart.

§ 1703.102 Definitions.

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Administrator means the Administrator of the Rural Utilities Service, or designee or successor.

Applicant means an eligible organization which applies for financial assistance under this subpart.

Champion Community means any community that submitted a valid application to become an Empowerment Zone/Enterprise Community (EZ/EC) area, met the requirements to be designated an EZ/EC area, but was not chosen because their score was not high enough to be selected.

Completed application means an application that includes all those items specified in § 1703.109 in form and substance satisfactory to the Administrator.

Comprehensive rural telecommunications plan means the plan submitted by an applicant in accordance with § 1703.109(a).

Computer networks means computer hardware and software, terminals, signal conversion equipment including both modulators and demodulators, or related devices, used to communicate with other computers to process and exchange data through a telecommunications network in which signals are generated, modified, or prepared for transmission, or received, via telecommunications terminal equipment and telecommunications transmission facilities.

Consortium means a combination or group of eligible entities formed to undertake the purposes for which the distance learning and telemedicine financial assistance is provided. Each consortium shall be composed of a minimum of two eligible organizations that meet the requirements of § 1703.103.

Construct means to acquire, construct, extend, improve, or install a facility or system.

Cost of money loan means a loan made under the DLT program bearing inter-

est at a rate equal to the then current cost of money to the government, at the time the feasibility study is completed, for loans of similar maturity not to exceed 10 years.

Data terminal equipment means equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the end user.

Distance learning means a telecommunications link to an end user through the use of eligible equipment to:

(1) Provide educational programs, instruction, or information originating in one area, whether rural or not, to students and teachers who are located in rural areas; or

(2) Connect teachers and students, located in one rural area with teachers and students that are located in a different rural area.

DLT borrower means an entity that has outstanding loans under the provisions of the DLT program.

DLT program means the Distance Learning and Telemedicine Loan and Grant Program administered by RUS pursuant to subtitle D, chapter 1, of the Rural Economic Development Act of 1990, as amended (7 U.S.C. 950aaa through 950aaa-4).

Economic useful life as applied to facilities financed under the DLT program means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) based on Internal Revenue Service depreciation rules or recognized telecommunications industry guidelines.

Eligible equipment means computer hardware and software, audio and visual equipment, computer network components, telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, inside wiring, interactive video equipment, or other facilities that would further telemedicine services or distance learning services. Land, buildings, or building construction are not considered eligible equipment (see § 1703.107(a)(10)).

Eligible organization means an incorporated entity that meets the requirements of § 1703.103.

Empowerment Zone and Enterprise Community (EZ/EC) means any community whose designation as such pursuant to 26 U.S.C. 1391 *et seq.* is in effect at the time RUS agrees to provide financial assistance.

End user means either or both of the following:

(1) Rural elementary or secondary schools or other educational institutions, such as institutions of higher education, vocational and adult training and education centers, libraries, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart;

(2) Rural hospitals, primary care centers or facilities, such as medical centers and clinics, and physicians and staff using such rural medical facilities, that participate in a rural telemedicine program through a project funded under this subpart.

End user site means a facility that is part of a network or telecommunications system that is utilized by end users.

Financial assistance shall consist of grants, cost of money loans, or both, made under the DLT program.

Grant documents means the letter of agreement, including any amendments and supplements thereto, between RUS and the grant recipient.

Grantee means a recipient of a grant from RUS to carry out the purposes of the DLT program.

Hub means control center of a network or telecommunications system.

Instructional programming means educational material, including computer software, which would be used for educational purposes in connection with eligible equipment but does not include salaries, benefits, and overhead of medical or educational personnel.

Interactive video equipment means equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations such that individuals at such locations can orally and visually communicate with each other. Such equipment in-

cludes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Letter of agreement means a legal document executed by RUS and the grantee that contains specific terms, conditions, requirements, and understandings applicable to a particular grant.

Loan documents mean the loan agreement, note, and security agreement, including any amendments and supplements thereto, between RUS and the DLT or Telecommunications/Electric borrower.

Local exchange carrier means a commercial, cooperative or mutual-type association, or public body that is engaged in the provision of telephone exchange service or exchange access.

Matching funds means the applicant's funding contribution for allowable purposes.

National School Lunch Program (NSLP) means the federally assisted meal program established under the National School Lunch Act of 1946 (42 U.S.C. 1751).

Project means an undertaking to provide or improve distance learning or telemedicine by using financial assistance provided under the DLT program.

Project service area means the area in which at least 90 percent of the persons to be served by the project are likely to reside.

Rural community facilities means facilities such as schools, libraries, learning centers, training facilities, hospitals, medical centers, or similar facilities, primarily used by residents of rural areas, that will use a telecommunications, computer network, or related advanced technology system to provide educational or health care benefits primarily to residents of rural areas.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture formerly known as REA, *see* 7 CFR 1700.1.

Scope of work means a detailed plan of work that has been approved by the Administrator to be performed by the applicant using financial assistance provided under this subpart.

Secretary means the Secretary of Agriculture.

Technical assistance means:

(1) Assistance in learning to operate equipment or systems; and

(2) Studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, or disseminating information.

Telecommunications carrier means any provider of telecommunications services.

Telecommunications/Electric borrower means an entity that has outstanding electric or telecommunications RUS or Rural Telephone Bank loans or loan guarantees under the provisions of the Act.

Telecommunications terminal equipment means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to over the air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities means facilities that transmit, receive, or carry data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

Telemedicine means a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

§ 1703.103 Applicant eligibility and allocation of funds.

(a) To be eligible to receive financial assistance under this subpart, the applicant must be organized in one of the following corporate structures:

(1) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity, including a municipal corporation or a private corporation organized on a for-profit or not-for-profit basis, which operates, or will operate, a school, college, university, learning center, training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic or any rural community facility. A state government, other than a state government entity that operates a rural community facility, is not considered an eligible applicant; or

(2) A consortium, as defined in § 1703.102. A consortium which includes a state government entity is only eligible if the state government entity operates a rural community facility; or

(3) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity which is providing or proposes to provide telemedicine service or distance learning service to other legal entities or consortia at rates calculated to ensure that the economic value and other benefits of the distance learning or telemedicine grant is passed through to such other legal entities or consortia.

(b) At least one of the entities in a partnership or consortium must be eligible individually, and the partnership or consortium must provide written evidence of its legal capacity to contract with RUS. If a partnership or consortium lacks the capacity to contract, each individual entity must contract with RUS on its own behalf.

(c) A borrower of an electric or telecommunications loan under the Act is eligible for a cost of money loan only.

(d) All applications for financial assistance, with the exception of applications requesting a loan and having the minimum required score, will be ranked by the type of application (health care or educational) and total

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points scored. Grant funds available for medical and educational applicants will be allocated based on the total number of medical and educational applications scoring in the top 50 percent of all applications received for that fiscal year. Applications will be ranked only in one category based on the predominant use of the project.

§ 1703.104 Allowable grant and loan funding percentage.

(a) Financial assistance, except as noted in paragraph (b) of this section, may be used by eligible organizations for distance learning and telemedicine projects to finance up to 70 percent of the cost of allowable purposes outlined in § 1703.105 provided that no financial assistance may exceed the maximum grant or loan amount for the year in which the grant or loan is made.

(b) Cost of money loans requested by an applicant may be used by eligible organizations for distance learning and telemedicine projects to finance up to 90 percent of the cost of allowable loan purposes outlined in § 1703.105, provided that no loan may exceed the maximum loan amount for the year in which the loan is made. Financial assistance applications that do not request a loan and qualify for a loan or combination loan and grant will be funded up to 70 percent of the cost of allowable purposes.

§ 1703.105 Grant and loan purposes.

Grants and loans shall be limited to costs associated with the initial capital assets associated with the project. Grant and loan funds as set out in the last sentence of this section shall not exceed twenty percent (20 percent) of the requested financial assistance. The following are allowable grant and loan purposes:

(a) Acquiring, by lease or purchase, eligible equipment as defined in § 1703.102;

(b) Acquiring instructional programming; and

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the

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phase of the project that is being financed with the financial assistance.

§ 1703.106 In-kind matching provisions.

(a) In-kind matching, the applicant's minimum funding contribution (specified in § 1703.104) for allowable purposes, is generally required in the form of cash. However, in-kind contributions for the purposes listed in § 1703.105 may be substituted for cash.

(b) In-kind items listed in § 1703.105 must be non-depreciated or new assets with established monetary value. Manufacturers or service providers discounts are not considered in-kind matching.

(c) Financial assistance may be provided for end user sites. Financial assistance may also be provided for hubs located in rural or non-rural areas, if they are necessary to provide distance learning or telemedicine services to rural residents at end user sites.

§ 1703.107 Ineligible loan and grant purposes.

(a) Without limitation, financial assistance under this subpart will not be provided:

(1) To cover the costs of installing or constructing telecommunications transmission facilities, except as provided in paragraph (c) of this section;

(2) To pay for medical equipment except medical equipment primarily used for encoding and decoding data, such as images, for transmission over a telecommunications or computer network;

(3) To pay salaries, wages, or employee benefits to medical or educational personnel;

(4) To pay for the salaries or administrative expenses of the applicant or the project;

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider;

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(7) To pay costs of preparing the application package for financial assistance under this program;

(8) For projects whose sole objective is to provide links between teachers and students or medical professionals who are located at the same facility;

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

(11) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(12) For any purpose that the Administrator has not specifically approved; or

(13) Except for leases provided in § 1703.105, to pay the cost of recurring or operating expenses for the project.

(b) Except as otherwise provided in § 1703.140, funds shall not be used to finance a project in part when success of the project is dependent upon the receipt of additional financial assistance under this subpart D or is dependent upon the receipt of other funding that is not assured.

(c) Loans can be used to cover the costs of telecommunications transmission facilities if no telecommunications carrier will install such facilities under the Act or through other financing procedures within a reasonable time period and at a cost to the applicant that does not jeopardize the feasibility of the project, as determined by the Administrator.

§ 1703.108 Maximum and minimum sizes of a grant and a loan.

Applications for grants and loans to be considered under this subpart will be subject to limitations on the proposed amount of financial assistance. The Administrator may establish the maximum amount of financial assistance to be made available to an individual recipient for each fiscal year under this subpart, by publishing notice of the maximum amount in the FEDERAL REGISTER not more than 45 days after funds are made available for the fiscal year to carry out this subpart. The minimum size of a grant or loan is \$50,000.

§ 1703.109 The application for financial assistance.

The following items comprise the required material that must be submitted

to RUS in support of the application for financial assistance:

(a) *Proposed scope of work of the project.* The proposed scope of work of the project which includes, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for capital expenditures reflecting the line item costs for both the grant and loan funds and other sources of funds for the project.

(b) *Executive summary for the project.* The applicant must provide RUS a general project overview, verification of compliance with the general requirements of this subpart, and documentation of eligibility. The executive summary shall contain the following 9 categories:

(1) A description of why the project is needed.

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance and types of educational or medical services to be offered by the project, and the benefits to the rural residents.

(3) A description of the applicant, documenting eligibility with § 1703.103.

(4) An explanation of the total cost of the project including a breakdown of the RUS financial assistance required and the source of funding for the remainder of the project.

(5) A statement that the project is either a distance learning or telemedicine facility as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system.

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used.

(7) A description of the participating hubs and end user sites and the number of rural residents which will be served by the proposed project at each end user site.

(8) The applicant must certify that facilities using financial assistance do

not duplicate adequate established telemedicine services or distance learning services. RUS will make the final determination whether or not financial assistance requested by an applicant will duplicate such adequate established services.

(9) A listing of the location of each end user site (city, town, village, borough or rural area plus the state) discussing how the appropriate National School Lunch Program eligibility percentage was determined in accordance with § 1703.112. These percentages may be obtained from the State or local organization that administers the program and must be certified by that organization as being correct.

(c) *Financial information.* The applicant must provide financial information to support the need for the financial assistance requested for the project. It must show its financial capacity to carry out the proposed work, and show project feasibility. For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data which adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10

years after completion of the project. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, and provide for replacement of depreciable items.

(2) For applicants requesting a loan and applicants who qualify for a loan or a combination loan/grant in accordance with § 1703.112, the documentation must demonstrate the ability to repay the loan. RUS will consider a secured loan guarantee by a third party as evidence of the ability of the applicant to repay a loan.

(3) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(4) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(5) For RUS telecommunications and electric borrowers applying for a cost of money loan, the only financial information required in support of that application is the respective most recent Annual Report to RUS (i.e. RUS Form 479, Form 7, or Form 12).

(d) *A statement of experience.* The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the proposed project. Experience in a similar project is desirable but not required.

(e) *Funding commitment from other sources.* The applicant must provide evidence, in form and substance satisfactory to the Administrator, that all funds in addition to funds provided under this subpart are committed and will be used for the proposed project.

(f) *Telecommunications System Plan.* A Telecommunications System Plan, consisting of the following, is required. The items in paragraphs (f) (4) and (5) of this section are needed only when the applicant is requesting loan funds for telecommunications transmission facilities:

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using RUS financial assistance.

(3) A description of the consultations with the appropriate telecommunications carriers (including other inter-exchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussion with local exchange carriers serving the project area addressing concerns in §1703.107 (c).

(5) The capabilities of the telecommunications transmission facilities, including bandwidth, networking topology, switching, multiplexing, standards and protocols for intra-networking and open systems architecture (the ability to effectively communicate

with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) *Proposed evaluation methodology.* The applicant must provide a proposed method of evaluating the success of the project in meeting the objectives of the program as set forth in §1703.100 and §1703.101 and the proposed scope of work.

(h) *Compliance with other Federal statutes and regulations.* The applicant is required to submit evidence that it is in compliance with other applicable Federal requirements including, but not limited to the following:

(1) Equal opportunity and non-discrimination requirements;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs;

(5) Drug-free workplace;

(6) "Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transaction" (See 7 CFR 3017.510);

(7) Intergovernmental review of Federal programs if clearing house(s) exists for the state(s) in which project is located; and

(8) Restrictions on lobbying. For an application for financial assistance in excess of \$100,000, a certification statement, "Certification Regarding Lobbying" is required. If the applicant is engaged in lobbying activities, the applicant must submit a completed disclosure form, "Disclosure of Lobbying Activities" (see 7 CFR part 3018).

(i)(1) *Environmental impact and historic preservation.* The applicant must provide details of the project's impact on

the environment and historic preservation. Grants and loans made under this part are subject to 7 CFR part 1794 which contains the policies and procedures of RUS for implementing a variety of Federal statutes, regulations and executive orders generally pertaining to protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled “Environmental Impact of the Project.”

(2) *Environmental information.* An “Environmental Questionnaire,” appendix A to this subpart, may be used by applicants to assist in complying with the requirements of this section. Copies of the Environmental Questionnaire are available from RUS.

(j) A completed Standard Form 424, “Application for Federal Assistance,” along with a board of directors resolution authorizing the request for financial assistance.

(k) Evidence of the applicant’s legal existence and authority to enter into a grant or loan agreement with RUS and perform activities proposed under the grant or loan application.

(l) Evidence that the applicant is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019).

(m) Evidence that the applicant has consulted with the USDA State Director, Rural Development, concerning the availability of other sources of funding available at the state or local level.

(n) Evidence from the USDA State Director, Rural Development, that the application conforms with the State strategic plan as prepared under section 381D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). The applicant should indicate if such a plan does not exist.

(o) *A depreciation schedule covering all assets of the project.* Those assets for which financial assistance is being requested should be clearly indicated.

(p) *Supplemental information.* The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the proposed project would further the purposes of this subpart.

(q) *Additional information requested by RUS.* The applicant must provide any additional information the Administrator may consider relevant to the application and necessary to adequately evaluate the application. RUS may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

§ 1703.110 Conflict of interest.

At any time prior to the disbursement of a grant or loan awarded under this subpart, the Administrator may disqualify an otherwise eligible project whenever, in the judgment of the Administrator, the project would create a conflict of interest or the appearance of a conflict of interest. RUS will notify the applicant in writing of the Administrator’s intention to disqualify the project under this section and set forth the basis for the Administrator’s determination that a conflict of interest or appearance exists. Thereafter, the applicant will have 30 days from the date of such notice to file a written response with the Administrator. If the Administrator receives the applicant’s response within the 30-day period, the Administrator will consider the information contained therein before making a final determination whether to disqualify the project. RUS will promptly notify the applicant of the final determination whether a conflict of interest or appearance of a conflict exists. If the determination is affirmative, the notice will also advise the applicant whether the project is disqualified or conditionally disqualified. If the project is conditionally disqualified, the notice will state under what circumstances the project may continue to be eligible for assistance under this subpart. The Administrator’s decision under this section will be final.

§ 1703.111 [Reserved]

§ 1703.112 Determination of types of financial assistance.

(a) To maximize the use of available funding and to obtain the maximum repayment to the government, RUS will determine if an applicant will be awarded a grant, loan or a combination

of both loans and grants based upon the following:

(1) The percentage of students eligible to participate in the National School Lunch Program in the areas where the end user sites comprising the project are located; and

(2) The applicant's ability to pay for the project. Financial assistance in the form of grants or a combination of loans and grants will be made available only to those otherwise eligible applicants determined by the Administrator, after review of the financial information furnished by the applicant, to have the least ability to repay the full amount of assistance provided.

(b) The methodology contained in this section will be used to evaluate the relative financial need of the applicant, community, and project. All applicants are required to provide the applicable percentage of students eligible to participate in the National School Lunch Program for each end user site which must be certified as being correct by the appropriate State or local organization administering the program. The type of financial assistance will be determined as follows:

(1) If the end user site(s) for the project have, or are located in school districts which have, from 0–32 percent student eligibility in the National School Lunch Program, the project qualifies for a loan.

(2) If the end user site(s) for the project have, or are located in school districts which have, from 33–60 percent student eligibility in the National School Lunch Program, the project qualifies for a loan and may be eligible for some grant funds.

(3) If the end user site(s) for the project have, or are located in school districts which have, from 61–100 percent student eligibility in the National School Lunch Program, the project qualifies for a grant. The applicant may indicate its desire to be considered for a loan or a combination loan and grant if denied a grant provided the financial data required in § 1703.109(c) indicates the ability to repay a loan. Grant applicants should indicate if they desire to be considered for a loan.

(4) Percentage ratios will be rounded up to the next highest or rounded down

to the next lowest whole number for fraction of percentages at or greater than .5 or less than .5, respectively.

(c) The following guidelines will be used to determine the applicable National School Lunch Program eligibility percent for a particular end user site:

(1) Public schools or nonprofit private schools of high school grade or under will use the actual eligibility percentage for that particular school.

(2) Schools and institutions of higher learning ineligible to participate in the National School Lunch Program and non-school end user sites (medical facilities, libraries, etc.) will use the eligibility percentage of all students in the school district where the end user will be located.

(d) If all the end user sites in a proposed network or system fall within the same percentile category, the project will be eligible for the type of financial assistance set forth in paragraph (b) of this section.

(e) If end user sites fall within different percentile categories the eligibility percentages associated with each end user site will be averaged to determine the percentile category and type of financial assistance the applicant is eligible for. For purposes of averaging, if a hub is also utilized as an end user site, the hub will be considered as an end user site.

(f) For those applicants which qualify for a combination loan/grant, the Administrator will determine the amount of the grant the applicant will receive, if any, based upon analysis of the financial condition of the applicant as reflected by the information submitted under § 1703.109(c). The minimum amount of a grant will be \$5,000.

(g) RUS will submit a letter to those applicants being offered financial assistance in the form of a loan, or a combination of a loan and grant, outlining terms and conditions of such assistance. The applicant will have 15 days from the date of the letter to accept the terms and conditions in the letter. If the applicant fails to respond within this time the Administrator may withdraw the offer of financial assistance and the applicant will have no right to appeal the withdrawal.

§ 1703.113 Application filing dates, location, processing, and public notification.

(a) Applications for financial assistance under this subpart shall be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250-1590. Applications should be marked “Attention: Assistant Administrator, Telecommunications Program”.

(b) Applications for loans can be submitted at any time. RUS will review each application for completeness in accordance with § 1703.109, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information which is incomplete. To be considered for loan funds during the fiscal year (FY) that the application is submitted, the applicant must submit any information needed to complete the application by June 30. If this review concludes that a loan is feasible and the application receives the required minimum number of points as determined using the scoring criteria in § 1703.117, the Administrator will immediately process the application. The minimum number of points required for a loan application to be immediately processed will be published in the FEDERAL REGISTER each fiscal year.

(c) Applications requesting grant funds must be submitted to RUS to arrive not later than August 12, 1997 if the applications are to be considered during FY 1997. Beyond FY 1997, all applications requesting grant funds must be submitted to RUS to arrive not later than April 30 if the applications are to be considered during the fiscal year the application is submitted. It is suggested that applications be submitted prior to the above deadline to ensure they can be reviewed and considered complete by the deadline. RUS will review each application for completeness in accordance with § 1703.109, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information which is incomplete. To be considered for grant funds, the applicant must submit the information to complete the application by August 12, 1997 in FY 97 and April 30 be-

yond FY 97. If the applicant fails to submit such information by the appropriate deadline, the application will be considered during the next fiscal year.

(d) The Administrator will publish, at the end of each fiscal year, a notice in the FEDERAL REGISTER of all completed applications receiving financial assistance under this subpart. The Administrator will also make those applications available for public inspection at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. For purposes of this paragraph, applications include any information not protected by the Privacy Act of 1974, 5 U.S.C. 552a, and any other information that has not been designated as proprietary information by the applicant.

(e) All applicants must submit an original and two copies of a completed application. A grant applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the state, at the same time it submits an application to RUS. All applications must include the information described in § 1703.109.

§§ 1703.114–1703.116 [Reserved]

§ 1703.117 Criteria for scoring applications.

(a) *Criteria.* The criteria in this section will be used by RUS to score applications that have been determined to be in compliance with the requirements of this subpart. Applicants shall address the following criteria:

- (1) The need for services and benefits derived from services;
- (2) The comparative rurality of the proposed project service area;
- (3) The ability to leverage resources;
- (4) Innovativeness of design;
- (5) Connectivity with outside networks;
- (6) The cost effectiveness of the design;
- (7) Project participation in EZ/EC (Empowerment Zone and Enterprise Communities); and
- (8) Project participation in Champion communities.

(b) *Scoring criteria*—(1) *The need for services and benefits derived from services.*
(i) This criterion will be used by RUS

to score applications based on the documentation submitted in support of the application for financial assistance that reflects the need for services and benefits derived from the services proposed by the project. Up to 45 points can be assigned to this criterion.

(ii) RUS will consider the extent of the applicant's documentation explaining the economic, education or health care challenges facing the community; the applicants proposed plan to address these challenges; how the financial assistance can help; and why the applicant cannot complete the project without a loan or grant. The Administrator will also consider any support by recognized experts in the related educational or health care field, any documentation substantiating the educational or health care underserved nature of the applicant's proposed service area, and any justification for specific educational or medical services which are needed and will provide direct benefits to rural residents. Some examples of benefits to be provided by the project include, but are not limited to:

(A) Improved education opportunities for a specified number of students;

(B) Travel time and money saved by telemedicine diagnosis;

(C) Number of doctors retained in rural areas;

(D) Number of additional students electing to attend higher education institutions;

(E) Lives saved due to prompt medical diagnosis and treatment;

(F) New education courses offered, including college level courses;

(G) Expanded use of educational facilities such as night training;

(H) Number of patients receiving telemedicine diagnosis;

(I) Provision of training, information resources, library assets, adult education, lifetime learning, community use of technology, jobs, connection to region, nation, and world.

(iii) That rural residents, and other beneficiaries, desire the educational or medical services to be provided by the project (a strong indication of need is the willingness of local end users or institutions to pay, to the extent possible, for proposed services).

(iv) The project's development and support based on input from the local residents and institutions.

(v) The extent to which the application is consistent with the State strategic plan prepared by the Rural Development State Director of the United States Department of Agriculture.

(2) *The comparative rurality of the proposed project service area.* (i) The methodology contained in this section is used to evaluate the relative rurality (i.e. population) of service areas for various projects. Under this system, the end user sites and hubs (as defined in §1703.102) contained within the proposed project service area are identified. Then, those locations are given a score according to the population of the area where the end user sites are located. Up to 35 points can be assigned to this criterion.

(ii) The following definitions are used in the evaluation of rurality:

(A) *Exceptionally Rural Area* means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.

(B) *Rural Area* means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 5,000 and not in excess of 10,000 inhabitants.

(C) *Urban Area* means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 10,000 inhabitants.

(iii) The applicant will receive points as follows:

(A) There are a total of 35 possible points for this criterion. The maximum number of points each end user site can receive is determined by dividing the total possible points for this criterion, 35, by the total number of end user sites. If a hub is utilized as an end user site, the hub will be considered as an end user site.

(B) If the end user site is located in an Exceptionally Rural Area, it will receive the maximum number of points each end user site can receive. If the end user site is located in a Mid-Rural Area, it will receive 50 percent of the

maximum number of points each end user site can receive. If the end user site is located in an Urban Area, it will receive 0 percent of the maximum number of points each end user site can receive.

(C) The total points for each end user site will be added to reach a final point total for the project.

(D) An application must receive a minimum of 18 points under this criterion to be eligible for any financial assistance.

(3) *The ability to leverage resources.* (i) This section is used to evaluate the ability of the applicant to contribute financially to the project and to secure other non-Federal sources of funding. Documentation submitted in support of the application for financial assistance should reflect any additional financial support for the project from non-Federal sources above the applicant's required percent matching of the RUS financial assistance as set forth in § 1703.104. The applicant must include evidence from authorized representatives of the sources that the funds are available and will be used for the proposed project—up to 35 points.

(ii) The applicant will receive points as follows:

(A) Matching for allowable financial assistance purposes greater than 30 percent, but less than or equal to 50 percent of the RUS financial assistance—10 points.

(B) Matching for allowable financial assistance purposes greater than 50 percent, but less than or equal to 100 percent of the RUS financial assistance—20 points.

(C) Matching for allowable financial assistance purposes greater than 100 percent, but less than or equal to 150 percent of the RUS financial assistance—25 points.

(D) Matching for allowable financial assistance purposes greater than 150 percent, but less than or equal to 200 percent of the RUS financial assistance—30 points.

(E) Matching for allowable financial assistance purposes greater than 200 percent of the RUS financial assistance—35 points.

(4) *Innovativeness of project.* This criterion will be used by RUS to score applications based on the documentation

submitted in support of the application for financial assistance that reflects the innovative nature of the project. The applicant should explain the extent to which, if any, the project is an innovative approach to either delivering or using telecommunications to address the needs of the community, and how the project differs in approach from the typical educational or health care application of technology. Up to 20 points can be assigned to this criterion.

(5) *Connectivity with outside networks.*

(i) This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the extent to which the proposed project can be connected to other educational or health care networks. Up to 20 points can be assigned to this criterion.

(ii) Consideration will be given to the extent that the proposed project will interconnect with other existing networks at the regional, statewide, national or international levels. RUS believes that to the extent possible, educational and health care networks should be designed to connect to the widest practicable number of other networks that expand the capabilities of the proposed project, thereby affording rural residents opportunities that may not be available at the local level. The ability to connect to the internet alone can not be used as the sole basis to fulfill this criteria.

(iii) Consideration will also be given to the extent that facilities constructed with federal financial assistance, particularly financial assistance under this chapter provided to entities other than the applicant, will be utilized to extend or enhance the benefits of the proposed project.

(6) *Cost effective design.* (i) This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the cost efficiency of the project design. Up to 15 points can be assigned to this criterion.

(ii) Consideration will be given to the extent that the proposed technology or technologies for delivering the proposed educational or health care services for the project service area are the

most cost effective for the project proposed. The application must contain information necessary for RUS to use accepted analytical and financial methodologies to determine whether the applicant is proposing the most cost-effective option. RUS will consider the applicant's documentation comparing various systems and technologies, whether the applicant's system is the most cost-effective system, and whether buying or leasing specific equipment is more cost effective. Points will be deducted from the scores of the applications that fail to utilize existing telecommunications facilities that could provide the transmission path for the needed services.

(7) *Project participation in EZ/ECs.* This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the designation of Empowerment Zones and Enterprise Communities (EZ/EC) included as beneficiaries of the proposed project. Ten (10) points will be assigned if at least one end user site is located in an EZ/EC.

(8) *Project participation in Champion Communities.* This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the designation of Champion Communities included as beneficiaries of the proposed project. Five (5) points will be assigned if at least one end user site is located in a Champion Community.

§ 1703.118 Other application selection provisions.

(a) *Selection.* Applications will be selected for financial assistance based on scores, availability of funds, and the provisions of this section. RUS will make determinations regarding the reasonableness of all numbers; dollar levels; rates; the nature and design of the project; cost; location; and other characteristics of the application and the proposed project to determine the number of points assigned to a grant application for all selection criteria. Joint applications submitted by multiple applicants as set forth in § 1703.113 will be rated as a single application.

(b) Regardless of the number of points an application receives in accordance with § 1703.117 or the feasibility of the proposed project, the Administrator may, based on a review of the applications in accordance with the requirements of this subpart:

(1) Limit the number of applications selected for projects located in any one state during a fiscal year;

(2) Limit the number of selected applications for a particular project;

(3) Select an application receiving fewer points than another higher scoring application if there are insufficient funds during a particular funding period to select the higher scoring application; provided, however, the Administrator may ask the applicant of the higher scoring application if it desires to reduce the amount of its application to the amount of funds available if, notwithstanding the lower grant amount, the Administrator determines the project is financially feasible in accordance with § 1703.109(d)(1) at the lower amount;

(4) Award a grant to an applicant whose application carries out the priorities listed in the scoring criteria in such a way to make the application unique; or

(5) Award a grant to an applicant which would normally qualify for other financial assistance, if the project achieves one or more of the following:

(i) Utilizes cutting edge technology to provide a solution to a unique problem;

(ii) Provides services otherwise not possible in an extremely isolated geographic area; or

(iii) Provides inordinate quantifiable benefit to rural communities relative to the amount of financial assistance requested.

(c) RUS will not approve an application if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of § 1703.109(d)(1);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, operation, or sustainability of the proposed project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program set forth in § 1703.101.

(d) RUS may reduce the amount of the applicant's grant award based on insufficient program funding for the fiscal year in which the project is reviewed, and offer the applicant loan funds in addition to the grant funds, if RUS determines that, notwithstanding a lower grant award, the project will show financial feasibility in accordance with § 1703.109(d)(1), and continues to meet all other provisions of this subpart. RUS will discuss its findings informally with the applicant and make every effort to reach a mutually acceptable agreement with the applicant. Any discussions with the applicant and agreements made with regard to a reduced grant amount will be confirmed in writing, and these actions shall be deemed to have met the notification requirements set forth in paragraph (e) of this section.

(e) RUS will provide the applicant an explanation of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section prior to making final project selections for the year. The applicant will be provided 15 days from the date of RUS' letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1703.119.

§ 1703.119 Appeal provisions.

All qualifying applications under this subpart will be scored based on criteria in section § 1703.117. A determination will be made by RUS based on the highest ranking applications and the amount of funds available for grants and loans. All applicants will be noti-

fied in writing of the score each application receives, and included in this notification will be a tentative minimum required score to receive financial assistance. If the score received by the applicant could result in the denial of its application, or if its score, while apparently sufficient to qualify for financial assistance, may be surpassed by the score awarded to a competing application after appeal, the applicant may appeal its numerical scoring. Any appeal must be based on inaccurate scoring of the application by RUS and no new information or data that was not included in the original application will be considered. The appeal must be made in writing within 10 days after the applicant is notified of the scoring results. Appeals shall be submitted to the Administrator, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the original scoring to determine whether to sustain, reverse or modify the original scoring determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant. An appeal based solely upon the type of financial assistance the applicant qualifies for will not be considered.

§§ 1703.120—1703.121 [Reserved]

§ 1703.122 Further processing of selected applications.

(a) During the period between the submission of the application and the execution of implementing documents, the applicant must inform RUS if the project is no longer viable or the applicant no longer desires financial assistance for the project. If the applicant so informs RUS, the selection will be rescinded and written notice to that effect shall be sent promptly to the applicant.

(b) If an application has been selected and the nature of the project changes, the applicant may be required to submit a new application to RUS for consideration depending on the degree of

change. A new application will be subject to review in accordance with this subpart. The selection may not be transferred to another project.

(c) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 3 months of the Administrator's selection of the application, the Administrator may rescind the selection and written notice to that effect will be sent promptly to the applicant.

(d) Recipients of financial assistance will be required to submit RUS Form 479-A, "Distance Learning and Telemedicine Technical Questionnaire."

(e) After an applicant selected for financial assistance has submitted such additional information, if any, RUS determines is necessary for completing the financial assistance documents, RUS will send the documents to the applicant to execute and return to RUS.

(1) The financial assistance documents will include, among other things, a letter of agreement for grants; loan documents, including third party guarantees, for loans; or any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The letter of agreement and the loan documents will include, among other things, conditions on the release or advance of funds and include at a minimum, a project description, approved purposes, the maximum amount of the financial assistance, supplemental funds, required of the project and certain agreements or commitments the applicant may have proposed in its application. In addition, the loan documents may contain covenants and conditions the Administrator deems necessary or desirable to provide assurance that the loan will be repaid and the purposes of the loan will be accomplished.

(3) The recipient of a loan will be required to execute a security instrument in form and substance satisfactory to RUS.

(4) DLT borrowers must, before receiving any advances of loan funds, provide security that is adequate, in the opinion of RUS, to assure repayment, within the time agreed, of all

loans to the borrower under the DLT program. This assurance will generally be provided by a first lien upon all of the borrower's assets or such portion thereof as shall be satisfactory to RUS. RUS may consider the projected revenues from the facilities subject to the lien.

(5) Security may also be provided by third-party guarantees, letters of credit, pledges of revenue or other forms of security satisfactory to RUS.

(6) The security instrument and other loan documents required by RUS in connection with loans under the DLT program shall contain such pledges, covenants, and other provisions as may, in the opinion of RUS, be necessary or desirable to secure repayment of the loan.

(7) If the facilities financed do not constitute a complete operating system, the DLT borrower shall provide evidence demonstrating, to RUS' satisfaction, that the borrower has sufficient contractual or other arrangements to assure that the facilities financed will provide adequate and efficient service.

(f) Until the letter of agreement or loan documents have been executed and delivered by RUS and by the applicant, RUS reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the program and the interests of the government.

(g) If the applicant fails to submit, within 120 calendar days from the date of RUS' selection of an application, all of the information that RUS determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, RUS may rescind the selection of the application and written notice of such rescission will be sent promptly to the applicant.

§§ 1703.123—1703.125 [Reserved]

§ 1703.126 Disbursement of loan and grant funds.

(a) For financial assistance of \$100,000 or greater, prior to the disbursement of funds, the recipient, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by 7 CFR part 3019.

(b) Financial assistance will be disbursed to recipients on a reimbursement basis, or with unpaid invoices for the eligible purposes set forth in this subpart, by the following process:

(1) An SF 270, "Request for Advance or Reimbursement," will be completed by the recipient and submitted to RUS not more frequently than once a month;

(2) After receipt of a properly completed SF 270, RUS will review for accuracy and if the form is satisfactory will schedule payment. Payment will ordinarily be made within 30 days; and

(3) For financial assistance approved during and subsequent to FY 1997, funds will be advanced in accordance to 7 CFR 1744.69.

(c) The recipient's share in the cost of the project will be disbursed in advance of financial assistance, or if the recipient agrees, on a pro rata distribution basis with financial assistance during the disbursement period. Recipient will not be permitted to provide its contribution at the end of the project.

(d) Concurrent grant and loan funds will be disbursed on a pro rata distribution basis.

§ 1703.127 Reporting and oversight requirements.

(a) A project performance activity report will be required of all recipients on an annual basis until the project is complete and the funds are disbursed by the applicant.

(b) A final project performance report will be required. It must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) RUS will monitor recipients as it determines necessary to assure that projects are completed in accordance with the approved scope of work and that funds are expended for approved purposes.

(d) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Recipients are to submit an original and one copy of all reports submitted to RUS. The project performance reports shall in-

clude, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

§ 1703.128 Audit requirements.

(a) The grant recipients and DLT borrowers will provide an audit report in accordance with either:

(1) 7 CFR part 3051, Audits of Institutions of Higher Education and Other Nonprofit Institutions, or its successor; or

(2) 7 CFR part 1773, Policy on Audits of RUS Borrowers.

(b) 7 CFR part 3051 applies to not-for-profit organizations (including hospitals, colleges and universities) and state, local, and Indian tribal governments. 7 CFR part 1773 applies to for-profit organizations receiving grants or loans, and all RUS telecommunications and electric borrowers receiving cost of money loans.

(c) For grant recipients the audit requirements only apply to the year(s) in which grant funds are expended. For DLT borrowers the audit requirements apply until the loan is repaid.

§ 1703.129 Repayment of loans.

The term of cost of money loans will be based on the economic useful life of the facilities to be financed, not to exceed 10 years. If the recipient requests, a one year deferment of principal will be included. In special hardship cases, which the recipient must justify, RUS may approve a two year deferment of principal. Interest on the loan will be due and payable during the principal deferral period. RUS will establish uniform debt service payments based on the total amortization period.

§§ 1703.130—1703.134 [Reserved]**§ 1703.135 Grant and loan administration.**

(a) RUS will review recipients as necessary to determine whether funds were expended for approved purposes. The recipient is responsible for ensuring that the project complies with all applicable regulations, and that the financial assistance is expended only for approved purposes. The recipient is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, canceled checks, or other appropriate forms of evidence, and that such supporting material is provided to RUS, upon request, and is otherwise made available, at the recipient's premises, for review by the RUS representatives, the recipient's certified public accountant, the office of Inspector General, U.S. Department of Agriculture, the General Accounting Office and any other officials conducting an audit of the recipient's financial statements or records, and program performance for the financial assistance awarded under this subpart. The recipient will be required to permit RUS to inspect and copy any records and documents that pertain to the project.

(b) Grants provided under this program will be administered under, and are subject to 7 CFR parts 3016 through 3019 or their successor, as appropriate. 7 CFR parts 3016 and 3019 subject grantees to a number of requirements which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits, bonding and insurance, cash depositories for grant funds, grant related income, use and disposition of real property and equipment purchased with grant funds, procurement standards, allowable costs for grant related activities, and grant close-out procedures.

§ 1703.136 Changes in project objectives or scope.

The recipient will obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain

prior approval of changes may result in suspension or termination of funds.

§ 1703.137 Grant and loan termination provisions.

(a) *Termination for cause.* RUS may terminate any financial assistance in whole, or in part, at any time before the date of completion of funding disbursement, whenever it is determined that the recipient has failed to comply with the conditions of the financial assistance. RUS will promptly notify the recipient in writing of the termination and the reasons for the termination, together with the effective date.

(b) *Termination for convenience.* RUS or the recipient may terminate financial assistance in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial termination's, the portion to be terminated. The recipient will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. RUS will allow full credit to the applicant for the Federal share of the noncancelable obligations, properly incurred by the recipient prior to termination.

§§ 1703.138—1703.139 [Reserved]**§ 1703.140 Expedited telecommunications loans.**

General. RUS will expedite consideration and determination of an application for a loan or a request for advance of funds submitted by an RUS telecommunications borrower that supports the project seeking financial assistance under this subpart. See 7 CFR part 1737 for loans and 7 CFR part 1744 for advances under this section.

APPENDIX A TO SUBPART D TO PART 1703—ENVIRONMENTAL QUESTIONNAIRE

NOTE: It is extremely important to respond to all questions completely to ensure expeditious processing of the Distance Learning and Telemedicine application. The information herein is required by Federal law.

§ 1703.300

IMPORTANT: Any activity related to the project that may adversely affect the environment or limit the choice of reasonable development alternatives shall not be undertaken prior to the completion of Rural Utilities Service's environmental review process.

Legal Name of Applicant _____

Signature _____

(Type/Sign/Date) _____

The applicant's representative certifies, to the best of his/her knowledge and belief, that the information contained herein is accurate. Any false information may result in disqualification for consideration of the loan or grant or rescission of the loan or grant.

I. Project Description—Detailing construction, including, but not limited to, internal modifications of existing structures, and installation of telecommunications transmission facilities (defined in 7 CFR 1703.102), including satellite uplinks or downlinks, microwave transmission towers, and cabling.

1. Describe the portion of the project, and site locations (including legal ownership of real property), involving internal modifications, or equipment additions to buildings or other structures (e.g., relocating interior walls or adding computer facilities) for each site.

2. Describe the portion of the project, and site locations (including legal ownership or real property), involving construction of transmission facilities, including cabling, microwave towers, satellite dishes; or, disturbance of property of .99 acres or greater for each project site.

3. Describe the nature of the proposed use of the facilities, and whether any hazardous materials, air emissions, wastewater discharge or solid waste will result.

4. State whether or not any project site(s) contain or are near properties listed or eligible for listing in the National Register of Historic Places, and identify any historic properties (The applicant must supply evidence that the State Historic Preservation Officer (SHPO) has cleared development regarding any historical properties).

5. Provide information whether or not any facility(ies) or site(s) are located in a 100-year floodplain. A National Flood Insurance Map should be included reflecting the location of the project site(s).

II. For projects which involve construction of transmission facilities, including cabling, microwave towers, satellite dishes, or physical disturbance of real property of .99 acres or greater, the following information must be submitted (7 CFR 1703.109(i)(3)).

1. A map (preferably a U.S. Geological Survey map) of the area for each site affected by construction (include as an attachment).

2. A description of the amount of property to be cleared, excavated, fenced or otherwise disturbed by the project and a description of

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the current land use and zoning and any vegetation for each project site affected by construction.

3. A description of buildings or other structures (i.e., transmission facilities), including dimensions, to be constructed or modified.

4. A description of the presence of wetlands or existing agricultural operations and threatened or endangered species or critical habitats on or near the project site(s) affected by construction.

5. Describe any actions taken to mitigate any environmental impacts resulting from the proposed project (use attachment if necessary).

NOTE: The applicant may submit a copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed project from State, local or other Federal bodies. Such material, to the extent relevant, may be used to meet the requirements herein.

Subpart E—Deferments of RUS Loan Payments for Rural Development Projects

SOURCE: 58 FR 21639, Apr. 23, 1993, unless otherwise noted.

§ 1703.300 Purpose.

This subpart E sets forth RUS's policies and procedures for making loan deferments of principal and interest payments on direct loans or insured loans made for electric or telephone purposes, but not for loans made for rural economic development purposes, in accordance with subsection (b) of section 12 of the RE Act. Loan deferments are provided for the purpose of promoting rural development opportunities.

§ 1703.301 Policy.

It is RUS's policy to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. Borrowers are encouraged to use this program to promote economic, business and community development projects that will benefit rural areas.

§ 1703.302 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this subpart, the following terms will have the following meanings:¹

Administrator means the Administrator of RUS.

Borrower means any organization which has an outstanding direct loan or insured loan made by RUS for the provision of electric or telephone service.

Cushion of credit payment means a voluntary unscheduled payment on an RUS note made after October 1, 1987, credited to the cushion of credit account of a borrower.

Deferment means a re-amortization of a payment of principal and/or interest on an RUS direct loan or insured loan for over either a 5- or 10 year period, with the first payment beginning on the date of the deferment.

Direct loan means a loan that is made by the Administrator pursuant to section 4 or section 201 of the RE Act (7 U.S.C. 901 *et seq.*) for the provision of electric or telephone service in rural areas and does not include a loan made to promote economic development in rural areas.

Financially distressed borrower means an RUS-financed borrower determined by the Administrator to be either:

- (i) In default or near default on interest or principal payments due on loans made or guaranteed under the RE Act;
- (ii) A borrower that was in default or near default, but is currently participating in a workout or debt restructuring plan with RUS; or
- (iii) Experiencing a financial hardship.

Insured loan means a loan that is made, held, and serviced by the Administrator, and sold and insured by the Administrator, pursuant to Section 305 of the RE Act (7 U.S.C. 901 *et seq.*) for the provision of electric or telephone service in rural areas and does not include a loan made to promote economic development in rural areas.

Job creation means the creation of jobs in rural areas, or in close enough proximity to rural areas so that it is likely that the majority of the jobs created will be held by residents of rural areas.

Project means a rural development project that a borrower proposes and the Administrator approves as qualifying under this subpart.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

RTB means the Rural Telephone Bank (telephone bank), a body corporate and an instrumentality of the United States, that obtains supplemental funds from non-Federal sources and utilizes them in making loans, operating on a self-sustaining basis to the extent practicable (section 401, RE Act).

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

Technical assistance means market research, product or service improvement, feasibility studies, environmental studies, and similar activities that benefit rural development or rural job creation projects.

(b) *Rules of construction.* Unless the context otherwise indicates; "includes" and "including" are not limiting, and "or" is not exclusive. The terms defined in §1703.302(a) include both the plural and the singular.

[58 FR 21639, Apr. 23, 1993, as amended at 59 FR 66440, Dec. 27, 1994]

§ 1703.303 Eligibility criteria for deferment of loan payments.

The deferment of loan payments may be granted to any borrower that is not financially distressed, delinquent on any Federal debt, or in bankruptcy proceedings. However, the deferment of loan payments will not be granted to a borrower during any period in which the Administrator has determined that no additional financial assistance of any nature should be provided to the

§ 1703.304

borrower pursuant to any provision of the RE Act. The determination to suspend eligibility for the deferment of loan payments under this subpart will be based on:

(a) The borrower's demonstrated unwillingness to exercise diligence in repaying loans made by RUS or RTB or guaranteed by RUS that results in the Administrator being unable to find that such loans, would be repaid within the time agreed; or

(b) The borrower's demonstrated unwillingness to meet the requirements in RUS's or RTB's legal documents or regulations.

§ 1703.304 Restrictions on the deferment of loan payments.

(a) The deferment must not impair the security of any loans made RUS or RTB, or guaranteed by RUS, pursuant to the RE Act.

(b) At no point in time may the amount of the debt service payments deferred exceed 50 percent of the total cost of a community, business, or economic development project for which a deferment is provided.

(c) A borrower may defer debt service payments only in an amount equal to the investment made by such borrower in a rural development project. The investment must not be made from:

(1) Proceeds of loans made or guaranteed pursuant to the RE Act, or grants made pursuant to the RE Act or section 2331 through section 2335A of the Rural Economic Development Act of 1990 (7 U.S.C. 950aaa *et seq.*);

(2) Funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien accommodated pursuant to the RE Act;

(3) Insurance proceeds from mortgaged property;

(4) Damage awards and sale proceeds resulting from eminent domain and similar proceedings involving mortgaged property;

(5) Sale proceeds from mortgaged property sales requiring specific Administrator approval; and

(6) Funds which are restricted by RUS or RTB loan instruments to be held in trust for the Government or to be held for any other specific purpose.

(d) Any investment made in a rural development project prior to the date

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of the application for a deferment based on such project cannot be used to satisfy the requirements of this section.

§ 1703.305 Requirements for deferment of loan payments.

(a) Except as otherwise provided in paragraph (b) of this section, the borrower must make a cushion of credit payment equal to the amount of the payment deferred and subject to the following rules:

(1) Cushion of credit payments made prior to the date that an application for deferral has been approved by RUS cannot be used to satisfy the requirements of this section;

(2) Once a cushion of credit payment has been made to satisfy the requirements of paragraph (a) of this section, it must remain on deposit in the cushion of credit account on the date of the deferral or the deferral will not take place; and

(3) The cushion of credit payment must be received by RUS on the date the payment being deferred is due, or within 30 days prior to this date.

(b) A borrower may elect to consolidate in one application filed pursuant to § 1703.311, all of the related deferrals it wishes to receive in a twelve month period following application approval. In such a case, the requirement contained in paragraph (a)(1) of this section may alternatively be satisfied by depositing an amount equal to the aggregate deferrals covered by such application into the cushion of credit account at the time the first cushion of credit payment is due under paragraph (a)(1) of this section.

§ 1703.306 Limitation on funds derived from the deferment of loan payments.

Funds derived from the deferment of loan payments will not be used:

(a) To fund or assist projects which would, in the judgement of the Administrator, create a conflict of interest or the appearance of a conflict of interest. The borrower must disclose to the Administrator information regarding any potential conflict of interest or appearance of a conflict of interest;

(b) For any purpose not reasonably related to the project as determined by the Administrator;

(c) To transfer existing employment or business activities from one area to another; or

(d) For the borrower's electric or telephone operations, nor for any operations affiliated with the borrower unless the Administrator has specifically informed the borrower in writing that the affiliated operations are part of the approved purposes.

§ 1703.307 Uses of the deferments of loan payments.

The deferment of loan payments will be made to enable the borrower to provide funding and assistance for rural development and job creation projects. This includes, but is not limited to, the borrower providing financing to local businesses, community development assistance, technical assistance to businesses, and other community, business, or economic development projects that will benefit rural areas.

§ 1703.308 Amount of deferment funds available.

(a) The total amount of deferments made available for each fiscal year under this program will not exceed 3 percent of the total payments due during fiscal year 1993 from all borrowers on direct loans and insured loans made under the RE Act. For each subsequent fiscal year after 1993, the total amount of deferments will not exceed 5 percent of the total payments due for the year from all borrowers on direct loans and insured loans.

(b) The total amount of annual deferments are subject to limitations established by appropriations Acts.

§ 1703.309 Terms of repayment of deferred loan payments.

(a) Deferments made to enable the borrower to provide financing to local businesses will be repaid over a period of 60 months, in equal installments, with payments beginning on the date of the deferment, and continuing in such a manner until the total amount of the deferment is repaid. The deferment payments will be made on either a monthly or quarterly basis depending on the existing repayment

terms of the direct loan or insured loan being deferred. The deferment will not accrue interest.

(b) In the case of deferments made to enable the borrower to provide community development assistance, technical assistance to businesses, and for other community, business, or economic development projects not included in paragraph (a) of this section, the deferment will be repaid over a period of 120 months, in equal installments, with payments beginning on the date of the deferment and continuing in such a manner until the total amount of the deferment is repaid. The deferment payments will be made on either a monthly or quarterly basis depending on the existing repayment terms of the direct loan or insured loan being deferred. The deferment will not accrue interest.

(c) The maturity date of a loan may not be extended as a result of a deferment.

(d) If the required payment is not made by the borrower or received by the Administrator when due, the Administrator will reduce the borrower's cushion of credit account established under this subpart in an amount equal to the deferment payment required.

(e) The balance in a borrower's cushion of credit account shall not be reduced by the borrower below the level of the unpaid balance of the payment deferred.

§ 1703.310 Environmental considerations.

Prospective recipients of funds received from the deferment of loan payments are encouraged to consider the potential environmental impact of their proposed projects at the earliest planning stage and plan development in a manner that reduces, to the extent practicable, the potential to affect the quality of the human environment adversely.

§ 1703.311 Application procedures for deferment of loan payments.

(a) A borrower applying for a deferment must:

(1) Submit a certified board resolution to the Administrator requesting a deferment of principal and interest. The resolution must:

(i) Be signed by the president or vice president of the borrower;

(ii) Contain information on the total amount of deferment requested for each specific project;

(iii) Contain information on the type of project and the length of deferment requested as defined in § 1703.309; and

(iv) Specify which officer of the borrower has been given the authority to certify to those matters required in this section;

(2) Submit certification by the appropriate officer to the Administrator that the proposed project will not violate the limitations set forth in § 1703.306 and disclose all information regarding any potential conflict of interest or appearance of a conflict of interest that would allow the Administrator to make an informed decision;

(3) Submit certification by the appropriate officer to the Administrator that an investment in the rural development project will be made by the borrower in an amount equal to the deferred debt service payment;

(4) Submit certification by the appropriate officer to the Administrator that the amount of the deferment will not exceed 50 percent of the total cost of the project for which the deferment is provided;

(5) Submit certification by the appropriate officer to the Administrator that it will make a cushion of credit payment necessary to satisfy the requirement of § 1703.305(a);

(6) Submit certification by the appropriate officer to the Administrator that it will comply with § 1703.313 and provide documentation showing that its total investments, including the proposed investment, will not exceed the investment limitations specified in 7 CFR part 1717, Subpart N, Investments, Loans and Guarantees by Electric Borrowers, or 7 CFR Part 1744, Post Loan Policies and Procedures Common to Guaranteed and Insured Loans. The documentation must provide a list of each rural development project the borrower has invested in to date, including the investment amounts;

(7) Submit to the Administrator written identification of the direct loan(s)

and/or insured loan(s) for which payments are to be deferred;

(8) Submit to the Administrator a written narrative which contains information regarding the proposed rural development or job creation project such as the manner in which the project will promote community, business, or economic development in rural areas, the nature of the project, its location, the primary beneficiaries, and, if applicable, the number and type of jobs to be created; and

(9) Submit to the Administrator a letter of approval from the state regulatory authority, if applicable, granting its approval for the borrower to defer direct loan payment(s) and/or insured loan payment(s) and invest the amount in a rural development project.

(b) The Administrator reserves the right to determine that special circumstances require additional data from borrowers before acting on a deferment. The Administrator also reserves the right to require, as a condition of approving a loan payment deferment pursuant to this subpart, that the borrower execute and deliver any amendments or supplements to its loan documents that may be necessary or appropriate to achieve the purposes outlined in § 1703.300.

(c) The Administrator will decide whether the borrower is eligible for the deferment and will notify the borrower of the decision.

§ 1703.312 RUS review requirements.

Borrowers shall ensure that funds are invested in the rural development project as approved by RUS. The Administrator reserves the right to review the books and copy records of borrowers receiving loan payment deferments as necessary to ensure that the investments in the rural development project are in accordance with this subpart and the representations and purposes stated in the borrower's completed application. If an audit discloses that the amount deferred was not used for the purposes stated in the completed application, the borrower shall be required to promptly repay the amount deferred and the benefits of the

deferment to the borrower will be recaptured by RUS. The borrower is responsible for ensuring that disbursements and expenditures of funds covering the investment in the rural development project are properly supported with certifications, invoices, contracts, bills of sale, cancelled checks, or any other forms of evidence determined appropriate by the Administrator and that such supporting material is available at the borrower's premises for review by the RUS field accountant, borrower's certified public accountant, the Office of Inspector General, the General Accounting Office and any other accountant conducting an audit of the borrower's financial statements for this rural development program.

§1703.313 Compliance with other regulations.

(a) Investments in a rural economic development project made by an electric borrower under this subpart are subject to the provisions of 7 CFR part 1717, Subpart N, Investments, Loans and Guarantees by Electric Borrowers.

(b) Investments in a rural economic development project made by a telephone borrower under this subpart are subject to the provisions of 7 CFR Part 1744, Post Loan Policies and Procedures Common to Guaranteed and Insured Loans.

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

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